

# **Clinical Use of Inclusive Language**

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## **Introduction**

Lawyers' primary professional tool is language.<sup>1</sup> Accordingly, lawyers should strive to use accurate, clear, and compelling word choices in their communications. Attorneys have the responsibility to use words that demonstrate respect for our clients and others. In addition, clinical instructors seek to further pedagogical and representation goals while also communicating principles of diversity, equity, and inclusion ("DEI") that are core to the principles of justice that ground our legal work.<sup>2</sup>

Inclusive language principles help to guide lawyers in choosing the most appropriate words to engender respect, amplify understanding, and enhance communication. While this requires nuanced analysis specific to the context and individuals involved, inclusive language can have a myriad of benefits. Beyond mere grammatical accuracy or linguistic specificity, word choices can help build relationships, foster understanding, and provide insight into personal narratives. Inclusive language is a goal unto itself, not simply a means to achieving advocacy goals, whether in the context of litigation, legislation, or community education.

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Jane Reardon, *Inclusive Language Is Allyship*, 2CIVILITY (Apr. 22, 2021), <https://www.2civility.org/inclusive-language-is-allyship/>.

<sup>2</sup> Jennifer Safstrom & Joseph Mead, *Developing Inclusive Language Competency in Clinical Teaching*, 29 Clinical Law Review 349 (2023).

As student attorneys in a clinic, law students may encounter these issues in practice for the first time. Looking at clinics as a microcosm of the broader legal community, this paper considers the inclusivity of clinics' language choices. To contextualize this assessment, the paper rearticulates a framework for inclusive language decision-making, discusses current best practices, summarizes current social and legal trends, and analyzes the implications of language choices through their work product and public communications. This project will more deeply focus on the work product, including educational and advocacy materials, that clinics have developed to assess the language choices and consider the application of these principles. The analysis will further assess how these language choices are reconciled with the general practice patterns, as well as the clinic's advocacy goals, clients, and intended audience. This work will also connect these principles to larger academic and practice issues, including the American Bar Association Accreditation Standard 303's mandate to law schools to provide instruction on professional identity, bias, cultural competency and humility, and racism.

### **Summary of Inclusive Language Decision-Making Principles**

This project builds upon prior scholarship setting forth key considerations for inclusive language decision-making in a multi-factor framework—accuracy, precision, relevance, audience, and respect.<sup>3</sup> These general principles provide a set of considerations to inform language

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<sup>3</sup> *Id.* at 361-69.

choices and guide the decision-making process, without dictating the use of a particular term in all situations. These key values help to facilitate critical self-reflection, which is a critical lawyering skill.<sup>4</sup> These principles are:

- **Inquire, Educate, Explore:** Ask questions. Recognize that language evolves rapidly, and so terms common years ago may no longer be appropriate.
- **Respect:** Use language that is humanizing and destigmatizing. Recognize that many terms come with baggage, and the use of certain phrases flattens a person to a particular aspect of their identity or a condition that they are experiencing. Defer to how an individual identifies.
- **Accuracy:** Use language that is exact and correct.
- **Precision:** Utilize an appropriate level of generality or granularity.
- **Relevance:** Assess whether aspects of a person's identity are relevant to the issue.
- **Audience:** Consider the recipient of your message. Advocates can use their platforms to educate judges, partners, and/or the public about terms and the reasoning informing these language choices.

These principles aim to provide a set of considerations to evaluate in deciding on the best term in context. This framework provides flexibility, allowing for the incorporation of evolving terms and changing social use. For instance, while the term queer “was previously used as a slur, [it] has been reclaimed by many parts of the LGBTQ+ movement.”<sup>5</sup> Rather than a

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<sup>4</sup> Kelley Burton & Judith McNamara, *Assessing Reflection Skills in Law Using Criterion*, 19 Legal Education 171, 184, (2009), <https://epublications.bond.edu.au/ler/vol19/iss1/8> (“Reflective learners take a deep or active learning approach by asking questions of the experience to develop their own understanding . . . [to] query underpinning beliefs, values, assumptions and evidence, and to be creative in their outlook upon alternative options, conclusions, perspectives and views.”).

<sup>5</sup> Human Rights Campaign, *supra* note \_\_\_\_.

framework that prescribes the use of the term queer or that, conversely, eschews its use in all cases, this methodology requires a contextualized analysis. In deciding whether the use of the term queer is apt, the author or speaker would consider not only the term's current social use (Inquire, Educate, Explore), but also the additional factors. One would assess the individual's identified language choices consistent with their identity and avoid loaded terms (Respect), consider the clarity (Accuracy) and specificity (Precision) of the used, in context with other potential terms (e.g., queer versus gay versus LGBTQ versus LGBTQIA+<sup>6</sup>). One would further consider the centrality of this language in the matter (Relevance) and how that language may be received by others in the course of achieving the representation goals (Audience).

Under this framework, it is best to seek guidance from individuals with whom one is directly engaged to understand how they describe their identity and which terms they feel comfortable using. Moreover, avoid making assumptions and educate oneself on current trends in language use.

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<sup>6</sup> See, e.g., LGBTQIA Resource Center Glossary, U.C. Davis, <https://lgbtqia.ucdavis.edu/educated/glossary#1> (last visited Nov. 1, 2023) ("LGBTQIA+: Abbreviation for Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, and Asexual. The additional "+" stands for all of the other identities not encompassed in the short acronym. An umbrella term that is often used to refer to the community as a whole. Our center uses LGBTQIA to intentionally include and raise awareness of Queer, Intersex and Asexual communities as well as myriad other communities under our umbrella."); see e.g., Movement Lawyering Clinic, Cornell Law School, <https://www.lawschool.cornell.edu/academics/experiential-learning/clinical-program/juvenile-justice-clinic/> (last visited Nov. 1, 2023) ("[L]aw students provide legal support for social justice groups including women's liberation, Black liberation, immigrants' and LGBTQ rights, and more.").

For instance, many organizations that work directly with particular communities can provide insight into general terms in current use.<sup>7</sup> Being mindful of variations in the preferences between members or a group and that some terms may only be appropriate for use by those who are in-group, as opposed to those not of that identity, is also important.<sup>8</sup>

Individuals should be careful using: zoomorphic, debasing idioms (e.g., “keeping someone on a tight leash”); coded, stigmatized phrases (e.g., “blue collar worker”); dehumanizing, reductionist language (e.g., “slave” instead of “enslaved person”).<sup>9</sup> One should also be cautious with the use of

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<sup>7</sup> Safstrom & Mead, at 369 (“Resources from the National Center on Disability and Journalism, GLAAD, and the Marshall Project, for instance, provide particular insight into the identifiers that are commonly used or preferred by members of their represented communities.”); *see also id.* Appendix.

<sup>8</sup> *In-group/Out-group*, Univ. of Tex., <https://ethicsunwrapped.utexas.edu/glossary/in-group-out-group> (last visited July 15, 2023).

<sup>9</sup> Brian Resnick, *The Dark Psychology of Dehumanization, Explained*, Vox (Mar. 7, 2017), <https://www.vox.com/science-and-health/2017/3/7/14456154/dehumanization-psychology-explained> (“Look back at some of the most tragic episodes in human history and you will find words and images that stripped people of their basic human traits. In the Nazi era, the film *The Eternal Jew* depicted Jews as rats. During the Rwandan genocide, Hutu officials called Tutsis ‘cockroaches’ that needed to be cleared out.”); Scott Cummings, *Racial Prejudice and Political Orientations Among Blue-Collar Workers*, SOC. SCI. Q. (1977), <https://www.jstor.org/stable/42859715>; *Language of Slavery*, Underground Railroad, Nat’l Park Serv. (Jan. 28, 2022), <https://www.nps.gov/subjects/undergroundrailroad/language-of-slavery.htm> (Using the term enslaved person “more accurately describes someone who was forced to perform labor or services against their will under threat of physical mistreatment, separation from family or loved ones, or death. . . . Enslaved person emphasizes the humanity of an individual within a slaveholding society over their condition of involuntary servitude. . . . [T]his term, in which enslaved describes but person is central, clarifies that humanity was at the center of identity while also recognizing that this person was forcibly placed into the condition of slavery by another person

colloquialisms or terms that have a loaded history. Although terms can become attenuated from their original meaning, it is helpful to be aware that many phrases have biased origins. For instance, while the term “off the reservation” may be an appropriate way to describe factual circumstances,<sup>10</sup> its more common use belies its historical roots. The use of the same term as a colloquialism to mean “to deviate from what is expected or customary; to behave unexpectedly or independently” carries negative connotations as a result of this origin.<sup>11</sup> The term’s derivation relates to “Native American peoples [who] were restricted to reservations created by the U.S. government, and their freedom was severely limited,” but has also been used in its more figurative sense for “a century-long history in American political life.”<sup>12</sup> Similar logic applies to the use of other casual turns of phrase or specific terms, including:<sup>13</sup>

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or group.”).

<sup>10</sup> American Indian Civil Rights Handbook, U.S. Comm’n on Civil Rights (Mar. 1972),

<https://www2.law.umaryland.edu/marshall/usccr/documents/cr11033.pdf> (“Others [tribes] permit absentee voting only by members temporarily absent from the reservation and still others allow absentee voting by members living permanently off the reservation.”).

<sup>11</sup> Kee Malesky, *Should Saying Someone Is ‘Off The Reservation’ Be Off-Limits?*, NPR (June 29, 2014),

<https://www.npr.org/sections/codeswitch/2014/06/29/326690947/should-saying-someone-is-off-the-reservation-be-off-limits>; see also Ben Zimmer, *‘Off the Reservation’ Is a Phrase With a Dark Past*, Wall Street J. (May 6, 2016), <https://www.wsj.com/articles/off-the-reservation-is-a-phrase-with-a-dark-past-1462552837>.

<sup>12</sup> Malesky, *supra* note \_\_\_\_.

<sup>13</sup> Christina Sterbenz & Dominic-Madori Davis, *12 Racist and Offensive Phrases That People Still Use All the Time*, Insider (June 16, 2020), <https://www.businessinsider.com/offensive-phrases-that-people-still-use-2013-11>; Chase Brexton, *Common Idioms and Expressions that are Unknowingly Offensive* (Oct. 3, 2022),

Term	Origin or Usage
peanut gallery	"[T]he popular phrase 'peanut gallery' typically used to reference hecklers, originated as a term to refer to those — usually Black people — who sat in the 'cheapest' section of the Vaudeville theaters."
uppity	"[T]he term 'uppity,' nowadays used generally to refer to a stuck-up or arrogant person, was commonly used to describe Black people that 'didn't know their socioeconomic place.'"
itis	"More commonly known now as a 'food coma,' this phrase directly alludes to the stereotype of laziness associated with African Americans. According to <a href="#">Mic</a> , it stems from a longer (and incredibly offensive) version — n---ritis."
paddy wagon	"'Paddy' originated in the late 1700s as a shortened form of 'Patrick,' and then later a pejorative term for any Irishman. 'Wagon' naturally refers to a vehicle. 'Paddy wagon' either stemmed from the large number of Irish police officers or the perception that rowdy, drunken Irishmen constantly ended up in the back of police cars, according to Splinter News."
hooligan	"This phrase started appearing in London newspapers around 1898. The <a href="#">Oxford Online Dictionary</a> speculates it evolved from the fictional surname 'Houlihan,' included in a popular pub song about a rowdy Irish family."
sold down the river	"Today, if someone 'sells you down the river,' [they] betray[] or cheat[] you. But the phrase has a much darker and more literal meaning. NPR reports that during slavery in the US, masters in the North often sold [ ] misbehaving [en]slave[d] [people], sending them down the Mississippi River to plantations in Mississippi, where conditions were much harsher."
eenie, meenie, miney, moe	"This modern, inoffensive version [of the children's rhyme] comes from a similar, older one, where n---er

<https://chasebrexton.org/blog/common-idioms-and-expressions-are-unknowingly-offensive/>; Kiran Herbert, *Offensive Words and Phrases to Eliminate from Your Business Communications*, Outside (Feb. 22, 2022), <https://www.outsideonline.com/business-journal/issues/offensive-words-and-phrases-to-eliminate-from-your-business-communications/>; Morgan Greenwald, *20 Things You're Saying That You Didn't Know Were Offensive*, BestLife (Nov. 1, 2020), <https://bestlifeonline.com/offensive-sayings/>; Janaki Challa, *Why Being 'Gypped' Hurts the Roma More Than It Hurts You*, NPR (Dec. 30, 2013), <https://www.npr.org/sections/codeswitch/2013/12/30/242429836/why-being-gypped-hurts-the-roma-more-than-it-hurts-you>.

	replaces tiger, according to Vox.”
cretin	“Though most people use the word ‘cretin’ to refer to someone that is ‘insensitive’ or ‘stupid,’ <a href="#">Merriam-Webster</a> writes that the word used to refer to those who lives in the French-Swiss Alps, and were affected with hypothyroidism.”
spirit animal	Using “spirit animal” to mean “an animal you identify with strongly” coopts the term’s origin and is considered “cultural appropriation of some indigenous peoples’ spiritual traditions.”
spaz	The term “spaz” to mean “over-energetic” or “excitable” belies the term’s “historic association with cerebral palsy which was previously known as spastic paralysis.”
long time no see/no can do	Grammatically incorrect phrases like “long time no see” or “no can do” “mimic[] non-native English speakers when they are speaking English.”
meeting a deadline	“Meeting a deadline” was the term for “a literal line at the Andersonville Confederate Prison during the Civil War in which people were killed when they crossed over it,” rather than its modern use: “to finish something” by a specific time.
totem pole	“A totem pole is a sacred cultural artifact; this phrase belittles it.” Using the phrase to denote the person with the least amount authority or influence (i.e., “low man on the totem pole”) further reinforced a negative association.
tribe	“Often used as a cutesy way to describe like-minded people, ‘tribe’ has colonial origins as a bureaucratic term forced on Native Americans and incorrectly applied to many Africans.”
slave driver	The term’s use to refer to a tough supervisor “makes light of the horrific experience of slavery.”
guru	Describing the terms “guru” and “ninja” as “culturally appropriated and [ ] gendered as masculine, which can discourage female applicants,” for instance, “when it appears in job descriptions.”
you guys	“Positing men as the status quo excludes women and non-binary folks.”
mumbo jumbo	“The phrase ‘mumbo jumbo’ likely comes from the West African god <i>Maamajomboo</i> . Why is it offensive?” In addition to being appropriative, “[a]pparently, Mandinka males would dress up like the god to solve domestic disputes and abuse their wives.”
basket case	“This saying for a person who has difficulty coping was first used during World War I to describe a person who



	had lost all four limbs and had to be carried in a basket.”
moron	“The term ‘moron’ wasn't originally an insult, but a psychological diagnosis denoting a mild disability.”
tipping point	“This seems benign enough, but the phrase was used in the ‘50s and ‘60s to reference the tendency for white families to move out of a neighborhood once it had been taken over by an African American majority.”
spinster	“Once upon a time, the word ‘spinster’ didn't refer to an unmarried woman, but a person who spun yard or thread for a living. Eventually the term took on its current meaning, as most of the women who were spinsters were also lower-class and unwed, relying on their job to provide for themselves.”
hysteria	“[D]octors used ‘hysteria’ as a medical explanation for nearly every sick woman they encountered. The idea for such a diagnosis comes from Hippocrates' belief that a woman's hysteria is caused by a ‘wandering uterus.’”
use as a crutch/lame/handicap	“Beyond ‘crippling,’ ableism is on display when people use the words ‘lame,’ ‘crutch,’ and ‘handicap.’”
gypped	The use of the term “gypped” to mean “defrauded, swindled, [or] cheated,” originated as a slur against the Romani people, who are colloquially referred to as gypsies.

Even terms with mixed or contested historical origin, like “hip hip hooray”<sup>14</sup> or “rule of thumb,”<sup>15</sup> may carry deep social connotations. Idioms

<sup>14</sup> Sterbenz & Davis, *supra* note \_\_\_\_ (“Though steeped in controversy, some think the first part of this phrase relates to anti-Semitic demonstrations that started in Germany in the 19th century. Germans cheered ‘hep hep,’ a German herding call, as they forced Jews from their homes across Europe, according to Cracked.”).

<sup>15</sup> *Compare* Under the Rule of Thumb: Battered Women and the Administration of Justice, U.S. Comm’n on Civil Rights (Jan. 1982), [https://www.nlm.nih.gov/exhibition/confrontingviolence/assets/transcripts/OB12012\\_200\\_dpi.pdf](https://www.nlm.nih.gov/exhibition/confrontingviolence/assets/transcripts/OB12012_200_dpi.pdf) (“American law is built upon the British common law that condoned wife beating and even prescribed the weapon to be used. This ‘rule of thumb’ stipulated that a man could only beat his wife with a ‘rod not thicker than his thumb.’”) (internal citation omitted) *with* Devon Link, *Fact Check: Origin Stories for Popular Phrases are Nothing More than Urban Legends*, USA Today (Oct. 16, 2020), <https://www.usatoday.com/story/news/factcheck/2020/10/16/fact-check-origin-stories-popular-phrases-urban-legends/5939942002/> (“In April 1998,

with problematic origins, despite removed in time and context, might nonetheless be divisive in their modern use, although some may argue the modern-day meanings are too far removed from their origins and reflect the way our language evolves.

Be mindful of ethical obligations. In keeping with a lawyer's duty to confidentiality,<sup>16</sup> do not disclose an individual's identity or personal history without their consent. For instance, in the LGBTQ community context, sharing information about an individual without their permission is known as "outing," which "can have serious repercussions on employment, economic stability, personal safety or religious or family situations."<sup>17</sup>

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the Baltimore Sun investigated the etymology of 'rule of thumb' and found no clear evidence that the domestic abuse story was true. The Sun suggested the phrase could have come from brewers' practice of using their thumb to test the temperature of beer."); *see also id.* ("Both the Sun and the Phrase Finder acknowledged a story in which a judge supposedly told a man he could beat his wife with a stick so long as it was thinner than his thumb. Allegedly, Judge Sir Francis Buller's 1782 decision inspired cartoonist James Gillray to publish a satirical illustration the following year, which dubbed him 'Judge Thumb.'"); *see also* Craig Shrives, *Rule of Thumb (Origin)*, Monster Grammar,

[https://www.grammar-monster.com/sayings\\_proverbs/rule\\_of\\_thumb.htm](https://www.grammar-monster.com/sayings_proverbs/rule_of_thumb.htm) (last visited Sept. 15, 2023) ("Gillray's cartoon shows a man beating his fleeing wife, while Judge Buller (called 'Judge Thumb'), carrying two bundles of sticks, watches the pair. The cartoon's caption reads 'thumbsticks - for family correction: warranted lawful!'); Why do we say 'rule of thumb'?, History Extra (Apr. 15, 2021), <https://www.historyextra.com/period/modern/rule-thumb-idiom-origins-meaning-phrase-why-do-we-say/>.

<sup>16</sup> Am. Bar Ass'n, Model Rules of Professional Conduct, Rule 1.6, [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_1\\_6\\_confidentiality\\_of\\_information/?login](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_6_confidentiality_of_information/?login) (Confidentiality of Information).

<sup>17</sup> Human Rights Campaign, *supra* note \_\_\_\_.

## **Evolving Social and Legal Use of Inclusive Language**

There is debate in the legal profession, as in society as a whole, about whether and how to center diversity in our interactions. These tensions manifest in a number of ways, in both the educational and professional contexts. The use of correct pronouns, to give one example, is not only a debate raised by litigation before courts, but is also actively being considered by the judiciary itself from within.<sup>18</sup>

Some efforts within the legal community seek to acknowledge “the importance of cross-cultural competence to professionally responsible representation and the obligation of lawyers to promote a justice system that provides equal access and eliminates bias, discrimination, and racism in the law.”<sup>19</sup> On the one hand, for instance, the American Bar Association’s Accreditation Standard 303 mandates law schools to provide instruction on professional identity, bias, cultural competency and humility, and racism.<sup>20</sup> State bar associations and courts have taken disciplinary action against

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<sup>18</sup> Compare Eesha Pendharkar, *Parents Are Suing Schools Over Pronoun Policies. Here’s What You Need to Know*, Education Week (May 12, 2023), <https://www.edweek.org/leadership/parents-are-suing-schools-over-pronoun-policies-heres-what-you-need-to-know/2023/05>, with Alex Ebert, *Pronoun Selection for Lawyers, Litigants Divides Michigan Courts*, Bloomberg Law (June 6, 2023), <https://news.bloomberglaw.com/business-and-practice/pronoun-selection-for-lawyers-litigants-divides-michigan-courts>.

<sup>19</sup> Revised ABA Standards 303(b) and (c) and the Formation of a Lawyer’s Professional Identity, Part 1: Understanding the New Requirements, NALP (May 2022), <https://www.nalp.org/revised-aba-standards-part-1> (discussing ABA standards for law schools).

<sup>20</sup> Michelle Weyenberg, ABA passes revisions to accreditation standards, National Jurist (Apr. 2, 2022), <https://nationaljurist.com/national-jurist/news/aba-passes-revisions-to-accreditation-standards/>.

attorneys using derisive language,<sup>21</sup> although some have noted inequities in bar discipline.<sup>22</sup> Attorneys may face disciplinary action for actions taken outside of professional settings.<sup>23</sup> A range of private and public institutions have vocalized support for diversity in the profession, access to courts, and

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<sup>21</sup> See, e.g., *Lawyers Suspended for Racist, Sexist, Xenophobic, and Homophobic Email Content*, Md. State Bar Ass'n (June 30, 2020), <https://www.msba.org/lawyers-suspended-for-racist-sexist-xenophobic-and-homophobic-email-content/> ("The Maryland Court of Appeals disciplined two attorneys for including racist, misogynistic, xenophobic, and homophobic remarks in their workday emails."); Hassan Kanu, *A Lawyer's Racism Can Impede Duty to Client, Massachusetts High Court Says*, Reuters (June 20, 2023), <https://www.reuters.com/legal/legalindustry/lawyers-racism-can-impede-duty-client-massachusetts-high-court-says-2023-06-20/> (finding bias can undermine zealous representation in a "case [that] involved . . . a court-appointed attorney who had chastised [his client] for wearing a kufi prayer cap when they first met in 2016, . . . left a second meeting without speaking after seeing [the client's] prayer cap [, and] . . . told [the client] not to 'wear that shit in court' during their final meeting, and encouraged him to accept a longer sentence than a prior attorney had sought, the opinion said.").

<sup>22</sup> Joe Patrice, *Study Finds That Bar Discipline Is Totally Racist Shocking Absolutely No One*, Above the Law (Nov. 19, 2019), <https://abovethelaw.com/2019/11/study-finds-that-bar-discipline-is-totally-racist-shocking-absolutely-no-one/> ("A California bar study has charted attorney discipline over a 28-year span and discovered that, by and large, black and Latinx attorneys are disciplined more often and their punishments are more severe than then comparable population of white lawyers.").

<sup>23</sup> *Backlash Mounts Against Attorney Whose Racist Rant Went Viral*, Yahoo (May 17, 2018), <https://www.yahoo.com/news/backlash-mounts-against-attorney-whose-074304592.html> ("A New York attorney caught hurling a racist rant . . . may now be facing disciplinary troubles, as a backlash has produced calls for his disbarment, prompted a U.S. Congressman to file a formal grievance, and caused members of the public to write scathing reviews of his legal practice on social media. According to news reports, Manhattan-based lawyer Aaron Schlossberg—whose law firm [website](#) touts his language fluency in Spanish—is . . . heard [in the video] berating the manager at Fresh Kitchen after overhearing a conversation in Spanish between other employees. The man accuses them of all being 'undocumented' and threatens to call U.S. Immigration and Customs Enforcement. 'I pay for their welfare, I pay for their ability to be here. The least they can do is speak English,' he said.").

other issued pertaining to DEI.<sup>24</sup> Some entities, including bar associations, have sought to provide guidance to legal professionals on diversity issues and implementation of equitable practices.<sup>25</sup>

Yet, there are challenges to inclusion. Some in the legal community see diversity as a threat to the profession. For instance, in an op-ed authored in the Wall Street Journal, Alabama Supreme Court Justice Jay Mitchell expressed worry over efforts by the National Conference of Bar Examiners (“NCBE”) to update the bar exam, criticizing the changes as undermining the rigor of the test (e.g., shortened duration, testing of fewer subjects).<sup>26</sup> His commentary directly juxtaposes his perceived higher standards of the older exam with equity considerations, contending that “the biggest concern is the NCBE’s use of the NextGen exam to advance its ‘diversity, fairness and inclusion’ agenda.”<sup>27</sup> Justice Mitchell asserts, these changes to the exam will “put[] considerable emphasis on examinees’ race, sex, gender identity, national and other identity-based characteristics” and

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<sup>24</sup> See, e.g., *State Court Statements on Racial Justice*, Nat’l Ctr. for State Cts., <https://www.ncsc.org/consulting-and-research/areas-of-expertise/racial-justice/state-activities/state-court-statements-on-racial-justice> (last visited Sept. 15, 2023); Edwin Bell, *Helping Courts Address Diversity, Equity, and Inclusion*, Judicature (2022), <https://judicature.duke.edu/articles/helping-courts-address-diversity-equity-and-inclusion/>.

<sup>25</sup> Report and Recommendations of the New York State Bar Association Task Force on Advancing Diversity, N.Y. Bar Ass’n (Sept. 2023), <https://nysba.org/app/uploads/2023/09/NYSBA-Report-on-Advancing-Diversity-9.20.23-FINAL-with-cover.pdf>.

<sup>26</sup> Sarah Wood, *NextGen Bar Exam: What to Know*, U.S. News (Feb. 15, 2023), <https://www.usnews.com/education/best-graduate-schools/top-law-schools/applying/articles/nextgen-bar-exam-what-to-know>.

<sup>27</sup> Jay Mitchell, *The New Bar Exam Puts DEI Over Competence*, Wall Street J. (May 19, 2023), <https://www.wsj.com/articles/the-new-bar-exam-puts-dei-over-competence-ncbe-family-law-schools-9c0dd4e8>.

that efforts to eliminate differences in group outcomes are resulting in a “water[ing] down the test.”<sup>28</sup> However, his op-ed fails to acknowledge ongoing controversies and concerns over disparities in bar exam results that are not in alignment with testing goals and undermine its validity as a neutral competency assessment—issues of which NCBE is acutely aware,<sup>29</sup> which is complemented by broader advocacy efforts<sup>30</sup> and movements to reconsider equities in other legal professional examinations, like the Law School Admissions Test (“LSAT”).<sup>31</sup>

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<sup>28</sup> *Id.*

<sup>29</sup> See, e.g., Karen Sloan, *Racial disparities in bar exam scores worsened in 2022*, Reuters (Apr. 12, 2023), <https://www.reuters.com/legal/legalindustry/racial-disparities-bar-exam-scores-worsened-2022-2023-04-12/> (“The first-time pass rate for white test takers last year was 83%, while 57% of Black examinees passed on their first attempt — a difference of 26 percentage points — the ABA said Tuesday. In 2021, that gap was 24 percentage points.”); DeVito, Scott and Lain, Erin and Hample, Kelsey, *Onerous Disabilities and Burdens: An Empirical Study of the Bar Examination’s Disparate Impact on Applicants From Communities of Color*, Pace Law Review (2023), <https://ssrn.com/abstract=4406981>; Gris , Jane Bloom, Question #1: Is There A Gender Gap In Performance On Multiple Choice Exams? A. Always B. Never C. Most Of The Time, Law Faculty Scholarly Articles (2001), [https://uknowledge.uky.edu/law\\_facpub/727](https://uknowledge.uky.edu/law_facpub/727).

<sup>30</sup> Stephanie Francis Ward, *Disability rights advocates challenge California’s bar exam accommodation process*, ABA Journal (June 13, 2023), <https://www.abajournal.com/web/article/lawyers-involved-with-lsat-consent-decree-file-doj-complaint-regarding-california-bar-exam> (“Two disability rights groups have filed a U.S. Department of Justice complaint against the State Bar of California alleging that the agency “consistently” violates the Americans With Disabilities Act regarding bar exam accommodation requests.”).

<sup>31</sup> Karen Sloan, *LSAT’s elimination of ‘logic games’ prompts jeers, cheers*, Reuters (Oct. 19, 2023), <https://www.reuters.com/legal/litigation/lsats-elimination-logic-games-prompts-jeers-cheers-2023-10-19> (The decision to axe logic games comes after the council in 2019 entered a settlement with two blind LSAT takers who claimed logic games violated the Americans with Disabilities Act because they could not draw diagrams that test takers often use to complete that portion of the test. That settlement gave the council



The debate within the bar and in practice expands much further. Law firms have been targeted for their programming<sup>32</sup> and sued for their diversity initiatives,<sup>33</sup> while also simultaneously expanding practice areas to meet the increased demand for DEI-legal assistance.<sup>34</sup> Educational institutions have had to navigate evolving DEI restrictions.<sup>35</sup> And this is to

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four years to revise the logic games.”).

<sup>32</sup> Tatyana Monnay, *Law Firms Embrace Roadmap Against Diversity Program Attacks*, Bloomberg Law (Oct. 2, 2023), <https://www.bloomberglaw.com/product/blaw/bloomberglawnews/bloomberg-law-news/X8NM5AH4000000?#jcite> (“[F]ive Republican state attorneys general [sent a letter Aug. 29](#) to the top 100 law firms to “ensure that you fully comply with your legal duty to treat all individuals equally—without regard to race, color, or national origin—in your employment and contracting practices.” Sen. Tom Cotton (R-Ark.) put law firms on notice for their DEI programs in a similar letter on [July 17](#).”).

<sup>33</sup> Kathryn Rubino, *Two Biglaw Firms Sued Over Diversity Initiatives*, Above the Law (Aug. 22, 2023), <https://abovethelaw.com/2023/08/two-biglaw-firms-sued-over-diversity-initiatives/>; see also Andrew Goudsward, *Law Firms Target DEI Backlash as Their Own Diversity Programs Draw Fire*, Reuters (Sept. 23, 2023), <https://www.reuters.com/legal/legalindustry/law-firms-target-dei-backlash-their-own-diversity-programs-draw-fire-2023-09-13/>.

<sup>34</sup> Tatyana Monnay, *Wall Street Firms Build Diversity Practices After Court Decision*, Bloomberg Law (Nov. 17, 2023), <https://www.bloomberglaw.com/product/blaw/bloomberglawnews/bloomberg-law-news/BNA%200000018b-43b2-d03e-afeb-f7b3d2b60001> (“The Supreme Court’s ban of affirmative action in college admissions has prompted a new wave of practices specializing in diversity, equity and inclusion at law firms . . . [that] decided there was enough business to justify creating the practice areas because of client queries about racial equity audits and whether diversity pushes would withstand possible legal challenges.”).

<sup>35</sup> See, e.g., Donald Padgett, *University of Houston Closing LGBTQA Resource Center to Comply with Anti-DEI Law*, Advocate (Aug. 24, 2023), <https://www.advocate.com/education/university-of-houston-dei-center>; Jaclyn Diaz, *Florida Gov. Ron DeSantis Signs a Bill Banning DEI Initiatives in Public Colleges*, NPR (May 15, 2023), <https://www.npr.org/2023/05/15/1176210007/florida-ron-desantis-dei-ban-diversity>.

say nothing of language used behind closed doors, reflecting racist, sexist, and dehumanizing views of clients, other attorneys, and judges.<sup>36</sup>

Another flashpoint of this debate is manifested in state courts, exemplifying the extremes of the backlash to DEI efforts. In Wisconsin the state's "Supreme Court [ ] denied a Wisconsin State Bar request to create a new continuing education credit for attorneys focusing on diversity, equity and inclusion."<sup>37</sup> In seeking to modify the state bar's educational requirements, the bar association noted ongoing education regarding "'the effects of bias in negatively impacting the delivery of legal services' would improve the quality of legal services in Wisconsin."<sup>38</sup> In rejecting the proposal, the court's order referred to DEI as "a disguise for dangerous identity politics" and stated:

If the Bar's end game were simply CLE credit, the petition would be easily dismissed as virtue signaling given the liberality with which the Board of Bar Examiners (BBE) already awards credit for such courses. But the Bar ultimately seeks to mandate DEIA training, impose group think on

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<sup>36</sup> Jon Levine, *'Woke' LA Firm Partners Routinely Used Vile Language to Refer to Women, POC, Emails Show*, NY Post (June 3, 2023), <https://nypost.com/2023/06/03/woke-la-firm-routinely-used-vile-language-to-refer-to-women-poc/> ("The partners made frequent use of the word f---t and other anti-LGBTQ slurs"; "repeatedly referr[ed] to women as 'c-ts' and a judge as 'sugar t-ts'"; wrote "'Kill her by anal penetration,' . . . [in] reacting to an overtime request from another Lewis Brisbois attorney"; and utilized numerous racial slurs and offensive stereotypes, including use of the n-word and statements like, "Gypsy is my new word to describe about half of the minorities in California.").

<sup>37</sup> Rich Kremer, *Supreme Court Justice Writes DEI Education for Attorneys Would Create 'Goose-Stepping Brigade,'* Wis. Public Radio (July 15, 2023), <https://www.wpr.org/wisconsin-supreme-court-denies-request-voluntary-dei-continuing-education-attorneys>.

<sup>38</sup> *Id.*



attorneys, and condition bar admission and continuing licensure on subscribing to an illiberal political ideology. Real diversity means welcoming dissenting voices, not coercing them into an echo chamber using the force of the State.<sup>39</sup>

In addition, the opinion declares that “the very language of DEI[] is at odds with our ‘national ethos.’”<sup>40</sup> Moreover, the opinion invokes a First Amendment critique in justifying its decision: “The very point of mandating DEIA CLE would be to create a ‘goose-stepping brigade[]’ of attorneys, but ‘the First Amendment applies strictures designed to keep our society from becoming moulded into patterns of conformity[.]’”<sup>41</sup> Despite acknowledging that “[o]n its face, the proposed rule might seem viewpoint neutral,” the court goes on to conclude that the “underlying illiberal political ideology knows the intent is to force a particular view on an entire profession” and that “[t]he DEI[] movement’s contempt for the First Amendment erodes the freedom of attorneys to advocate in their clients’ best interests lest they run afoul of prevailing sensitivities.”<sup>42</sup>

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<sup>39</sup> In the Matter of Diversity, Equity, Inclusion, and Access Training for Continuing Legal Education, Wis. Supreme Ct. (July 13, 2023), [https://www.wpr.org/sites/default/files/displaydocument\\_0.pdf](https://www.wpr.org/sites/default/files/displaydocument_0.pdf).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* (annotation in original) (citation omitted) (“This sort of extreme reaction to diverse viewpoints creates legitimate fear that mandatory DEIA CLE will become ‘a means to harass and drive from the profession all dissenters, by requiring many participants to sit through what they will undoubtedly consider hostile propaganda. Petty harassment and timewasting can serve effectively as an ideological screen.’”) (quoting David Randall, *Wokeness Is Creeping into Continuing Legal Education*, James G. Martin Ctr. Academic Renewal (Feb. 17, 2023)).

<sup>42</sup> *Id.*; see also Henry Redman, *Wisconsin Supreme Court Denies State Bar Request to Start DEI Training*, Wis. Examiner (July 13, 2023), <https://wisconsinexaminer.com/2023/07/13/wisconsin-supreme-court-denies-state-bar-request-to-start-dei-training/>.

In yet another example, a North Carolina Supreme Court Justice filed a lawsuit against the state’s Judicial Standards Commission, which is investigating public statements made by the justice that the commission asserts “appear to allege that your Supreme Court colleagues are acting out of racial, gender, and/or political bias in some of their decision making.”<sup>43</sup> This investigation was launched after Earls “told the online legal journal Law360.com that the state supreme court should examine the reasons behind the lack of diversity in state courts and what implicit biases may be within the judiciary.”<sup>44</sup> In the interview, “Earls herself, a Black female justice,” “discussed the court’s lack of judicial clerks from racial minority groups,” “the role implicit bias plays in interrupting female advocates . . . and during oral arguments,” and “the state courts’ discontinuance of racial equity and implicit bias training.”<sup>45</sup>

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<sup>43</sup> Justin Gamble, *North Carolina Supreme Court Justice Files Lawsuit Over State Investigation into Her Comments About Diversity*, CNN (Sept. 4, 2023), <https://www.cnn.com/2023/09/04/us/anita-earls-lawsuit-diversity-statements-reaaj/index.html>.

<sup>44</sup> *Id.*; see also Amanda Powers & Alicia Bannon, *State Supreme Court Diversity — May 2023 Update*, Brennan Ctr. (May 2023), <https://www.brennancenter.org/our-work/research-reports/state-supreme-court-diversity-may-2023-update> (“In 18 states, no justices identify as a person of color”; “Across high courts in all 50 states and Washington, DC, just 20 percent of state supreme court seats are held by people of color. By contrast, people of color make up over 40 percent of the U.S. population.”; “Men hold 58 percent of high court seats”) (original emphasis omitted).

<sup>45</sup> Kelan Lyons, *NC Supreme Court Justice Anita Earls Sues State’s Judicial Standards Commission*, NC Newsline (Aug. 29, 2023), <https://ncnewsline.com/2023/08/29/nc-supreme-court-justice-anita-earls-sues-states-judicial-standards-commission/>; Hannah Albarazi, *North Carolina Justice Anita Earls Opens Up About Diversity*, Law 360 (June 20, 2023), <https://www.law360.com/articles/1687516/north-carolina-justice-anita-earls-opens-up-about-diversity>.

This matter invokes the First Amendment as a defense against restrictions on the justice's DEI-related speech, contrasting with the role of free speech and viewpoint diversity espoused in the Wisconsin court's analysis:

[T]he First Amendment of the United States Constitution prohibits the Commission, as an arm of the State, from stifling or even chilling free speech, especially core political speech from an elected Justice of the North Carolina Supreme Court. The First Amendment allows Justice Earls to use her right to free speech to bring to light imperfections and unfairness in the judicial system. At the same time, the First Amendment prohibits the Commission from investigating and punishing her for doing so.<sup>46</sup>

In seeking an injunction to prevent further speech-chilling action by the commission, Justice Earls seeks to ensure the ability to “speak out about what they view as imperfections or defects in the judicial system and who do so in a measured and nuanced manner,” because in prohibiting such discourse, “[n]othing could be more inimical to the First Amendment.”<sup>47</sup> In this way, the First Amendment can be used as a basis to undergird speech protections, including on DEI efforts in the judiciary and legal profession.

Against this backdrop, courts have grappled with evolutions in language, contending with how to respond to emerging trends in inclusive language and offering a microcosm into professional use of varying terms.

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<sup>46</sup> Complaint, *Earls v. N.C. Judicial Standard Cmms'n*, Case 1:23-cv-00734 (Aug. 29, 2023), at 4, <https://storage.courtlistener.com/recap/gov.uscourts.ncmd.96465/gov.uscourts.ncmd.96465.1.0.pdf>.

<sup>47</sup> *Id.* at 20.

The range of responses from the judiciary has varied. Some courts have sought to keep parity with other judicial entities in adopting changes<sup>48</sup> while some have contemplated the grammatical legitimacy of changed terms.<sup>49</sup> Courts have at times adopted terms as used by the parties,<sup>50</sup> but have also declined to adopt the parties' preferred terms, as did the District of Arizona in *United States v. Merlo-Espinal*. In that matter, the court rejected the use of the term "Latinx," citing a Pew Research Center study that "a majority of U.S. Hispanics . . . prefer the terms Hispanic or Latino."<sup>51</sup>

In considering identity language, courts have, at times, conflated or merged terms. For instance, the Southern District of New York in *United*

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<sup>48</sup> *Dyjak v. Wilkerson*, No. 21-2012, 2022 WL 1285221, at \*1 (7th Cir. Apr. 29, 2022) ("We see no reason to break with that emerging consensus, in light of our normal practice of using the pronouns adopted by the person before us, *e.g.*, *Balsewicz v. Pawlyk*, 963 F.3d 650 (7th Cir. 2020) (using 'she' for a transgender woman when that is the person's preference), as well as the Supreme Court's decision to do so in *Bostock v. Clayton County*, 140 S. Ct. 1731, 1738 (2020).").

<sup>49</sup> *Id.* ("[D]espite the potential for some confusion about the singular and the plural, this usage of 'they/them/their' has now been accepted by numerous style guides and dictionaries as appropriate in referring to a singular person of unknown or non-binary gender.") (citing MLA Handbook § 3.5 (9th ed. 2021); APA Publication Manual § 4.18 (7th ed. 2020); The Associated Press Stylebook, *they, them, their* (55th ed. 2020); Farhad Manjoo, Opinion, *It's Time for 'They'*, N.Y. Times (July 10, 2019), <https://www.nytimes.com/2019/07/10/opinion/pronoun-they-gender.html>; The Chicago Manual of Style ¶ 5.48 (17th ed. 2017)).

<sup>50</sup> *L.O.K. by & through Kelsey v. Greater Albany Pub. Sch. Dist. 8J*, No. 6:20-CV-00529-AA, 2022 WL 2341855 (D. Or. June 28, 2022) (analyzing Title IX and related claims by "Plaintiff L.O.K. [] a twelve-year-old child who is intersex and non-binary" and "uses they/them pronouns").

<sup>51</sup> *United States v. Merlo-Espinal*, No. CR 21-1720-TUC-CKJ (DTF), 2022 WL 2191192, at \*3 (D. Ariz. June 17, 2022) (citing Luis Noe-Bustamante, Lauren Mora & Mark Hugo Lopez, *About One-in-Four U.S. Hispanics Have Heard of Latinx, but Just 3% Use It*, PEW RSCH. CTR. (Aug. 11, 2020), <https://www.pewresearch.org/hispanic/2020/08/11/about-one-in-four-u-s-hispanics-have-heard-of-latinx-but-just-3-use-it>).

*States v. Scott* noted that the “percent Black or African American (“Black”) individuals, and . . . Hispanic or Latino (“Latinx”) individuals.”<sup>52</sup> Courts have also used terms out of context, as did the Eastern District of Missouri in *Wilbers v. Moneta Group Investment Advisors, Inc.* In quoting Eighth Circuit caselaw, the court describes the U.S. Supreme Court “Justices . . . [as] mildly schizophrenic in mapping [the] contours” of a legal doctrine.<sup>53</sup> Offensive language is often found in statutes, caselaw, and other legal materials cited in scholarship and opinions.<sup>54</sup>

On other occasions, courts have made decisions about whether to defer to terms or capitalization in source materials, or to make modifications. While some courts adhere to the original source,<sup>55</sup> others incorporate updated language.<sup>56</sup> In *United States v. Talley*, the Northern

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<sup>52</sup> *United States v. Scott*, 545 F. Supp. 3d 152, 159–60 (S.D.N.Y. 2021).

<sup>53</sup> *Wilbers v. Moneta Grp. Inv. Advisors, Inc.*, No. 406CV00005 ERW, 2006 WL 1360866, at \*2 (E.D. Mo. May 17, 2006) (“Although the Supreme Court has indicated the broad scope of the phrase, ‘[t]hat locution is not self-defining, and the Justices have been at least mildly schizophrenic in mapping its contours.’”) (quoting *Minn. Chapter of Associated Builders and Contractors, Inc. v. Minn. Dept. of Pub. Safety*, 267 F.3d 807, 811–12 (8th Cir. 2001)).

<sup>54</sup> *Caring Cmty. of Conn., Inc. v. Town of Colchester*, No. HHB-CV-16-6037378-S, 2023 WL 4446569, at \*5 (Conn. Super. Ct. July 6, 2023) (“(iii) housing for homeless, retarded or mentally or physically handicapped individuals, or for battered or abused women and children”) (quoting Number 03-270 of the 2003 Public Acts, § 12-81 (7)).

<sup>55</sup> *Mitchell v. Morton Cnty. Sheriff Kyle Kirchmeier*, No. 1:19-CV-149, 2020 WL 8073625, at \*4 (D.N.D. Dec. 10, 2020), *aff’d in part, rev’d in part and remanded sub nom. Mitchell v. Kirchmeier*, 28 F.4th 888 (8th Cir. 2022) (“Mitchell contends ‘[d]efendants have a history of discriminating against and racially profiling individuals in Indigenous communities.’”).

<sup>56</sup> *State v. Griffin*, 846 N.W.2d 93, 100 (Minn. Ct. App. 2014) (modifying parenthetical to note: “concluding that when ‘parties agree that persons self-identifying as [B]lack are a distinctive group in the community . . . the first element of the *Williams* test’ has been satisfied.”).

District of California did both— preserving the source capitalization in quoted language but not in other sections. For instance, the court kept the original lowercasing of “black” when citing source material text that did not use caps (“The dispatcher asked if the man was ‘white, black, Asian, or Hispanic.’”).<sup>57</sup> However, the court opted to capitalize in non-quoted sections (“Talley is Black, with a medium to dark complexion.”).<sup>58</sup>

Courts have also looked to a range of different sources to inform and justify their language choices. For instance, in adopting they/them pronouns for the litigant in *People v. Gobrnick*, the opinion noted: “[T]his Court does not yet have an official policy in regard to the use of preferred pronouns.”<sup>59</sup> After disclaiming that the “use of nonbinary pronouns . . . has no effect on the outcome of the proceedings,” the court went on to use “they/them pronouns where applicable,” while also preserving record references that “use[d] the pronouns he/him.”<sup>60</sup> In support of its decision, the court cited the Merriam-Webster Dictionary, American Physiological Association, Michigan Bar Journal, and American Bar Association Journal, which all accept the use of the singular they/them.<sup>61</sup>

However, the concurrence of the same opinion accuses the court of fueling the flames of the “pronoun wars” which is “the greatest nightmare

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<sup>57</sup> *United States v. Talley*, No. 22-CR-00028-SI-1, 2022 WL 14813850, at \*1 (N.D. Cal. Oct. 25, 2022)

<sup>58</sup> *Id.* at \*3.

<sup>59</sup> *People v. Gobrnick*, No. 352180, 2021 WL 6062732, at \*1 (Mich. Ct. App. Dec. 21, 2021), *appeal denied*, 981 N.W.2d 59 (Mich. 2022); *but see infra* note \_\_\_\_.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

grammarians have ever endured.”<sup>62</sup> The concurrence disavows the use of inclusive language, stating: “I decline to join in the insanity that has apparently now reached the courts.” “Once we start down the road of accommodating pronoun (or other) preferences in our opinions,” the concurrence reasons, “the potential absurdities we will face are unbounded.”<sup>63</sup> Accordingly, Judge Boonstra writes: “ I decline to start down that road, and while respecting the right of dictionary- or style-guide-writers or other judges to disagree, do not believe that we should be spending our time crafting our opinions to conform to the ‘wokeness’ of the day.”<sup>64</sup>

“Michigan has become the first state to require judges to refer to attorneys by their preferred pronouns,” which will go into effect January 1, 2024, after the Michigan Supreme Court approved a new rule by a five-to-two majority.<sup>65</sup> The rule “allows attorneys to include their preferred forms of address or pronouns in the captions of court documents and requires judges to use those terms ‘or other respectful means’ when referring to those attorneys either in court or in documents,” with the use of “alternative neutral language such as ‘Attorney Smith’ or ‘Plaintiff Smith.’”<sup>66</sup> The order notes the importance of the rule in fostering public access and trust:

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<sup>62</sup> *Id.* at \*9 (Boonstra, J., concurring).

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> Karen Sloan, ‘History is made’ as Michigan judges are ordered to use lawyers’ preferred pronouns, Reuters (Sept. 28, 2023), <https://www.reuters.com/legal/government/history-is-made-michigan-judges-are-ordered-use-lawyers-preferred-pronouns-2023-09-28/>.

<sup>66</sup> *Id.*

Judges are ultimately public servants. We serve the entire public and are required to treat those who come before us with civility and respect. The gender identity of a member of the public is a part of their individual identity, regardless of whether others agree or approve. . . . The amendment of MCR 1.109(D) will help to promote and preserve the judiciary's credibility and currency with the public that we serve while also providing guidance to judges and court staff.<sup>67</sup>

In short, courts' adoption of inclusive language is highly varied, but many are confronting these issues in their practice and in the substance of their decisions. More generally, equity and inclusion principles are being actively debated within court systems, by practicing attorneys, in legal academia, and in our society writ large.

### **Inclusive Language Practices in Clinics**

Clinics serve an important role in preparing students for practice. In addition to fulfilling educational mandates,<sup>68</sup> teaching inclusive language decision-making skills serves other practice and pedagogical interests. Inclusive language practices are essential to comply with professional ethics rules.<sup>69</sup> In addition to building cultural competence and fostering positive

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<sup>67</sup> Amendment of Rule 1.109 of the Michigan Court Rules, Michigan Supreme Court, [https://www.courts.michigan.gov/siteassets/rules-instructions-administrative-orders/proposed-and-recently-adopted-orders-on-admin-matters/adopted-orders/2022-03\\_2023-09-27\\_formor\\_amdmcr1.109.pdf](https://www.courts.michigan.gov/siteassets/rules-instructions-administrative-orders/proposed-and-recently-adopted-orders-on-admin-matters/adopted-orders/2022-03_2023-09-27_formor_amdmcr1.109.pdf) (Welch, J.).

<sup>68</sup> William E. Adams, Jr. & Leo P. Martinez, *Focus on Diversity: The ABA Strengthens Diversity, Equity, and Inclusion Educational Requirements for Law Schools*, Bar Examiner (Summer 2022), <https://thebarexaminer.ncbex.org/article/summer-2022/focus-on-diversity-2/>.

<sup>69</sup> See, e.g., Priscilla DeGregory, 'Racist Lawyer' Aaron Schlossberg Publicly Scolded by Appeals Court, N.Y. Post (Dec. 22, 2022), <https://nypost.com/2020/12/22/racist-lawyer-aaron-schlossberg-scolded-by->



relationship building, inclusive language reinforces effective communication and has an impact on the clinic's representation. Given the importance of clinical advocacy, this section considers how clinics exemplify the trends in courts and society more broadly with respect to the adoption of inclusive terms.

### **A. Race & Ethnicity**

The law, as society as a whole, faces an ongoing struggle in discerning what terminology best reflects the nuances of an individual's lived experiences and the fullness of their identity. Generally, it is recommended to avoid terms that have potentially coded meanings, such as "urban" or "thug."<sup>70</sup> It is also recommended to avoid oversimplification or reductionism in describing an individual's identity. It is further suggested to define

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[appeals-court/](#) (documenting attorney's statements, including: "If they have the balls to come here and live off of my money — I pay for their welfare, I pay for their ability to be here — the least they can do is speak English"); *Matter of Teague*, 15 N.Y.S.3d 312, 313 (2015) ("Respondent was charged with having made patently offensive racial, ethnic, homophobic, sexist, and other derogatory remarks to attorneys, in violation of rule 8.4(h) of the Rules of Professional Conduct"); Debra Cassens Weiss, *After Learning Lawyer's Remark Was a 'Serious Covert Insult,' Judge Refers Incident to State Bar*, ABA JOURNAL (July 21, 2022), <https://www.abajournal.com/news/article/fter-learning-lawyers-remark-was-serious-covert-insult-judge-refers-incident-to-state-bar> (reporting attorney used "'See You Next Tuesday' [a]s a euphemism for the C-word" towards two female lawyers).

<sup>70</sup> See, e.g., Jemima McEvoy, *Here's How 'Urban,' A Term Plagued By Racial Stereotypes, Came to Be Used to Describe Black Musicians*, FORBES (June 10, 2020), <https://www.forbes.com/sites/jemimamcevoy/2020/06/10/heres-how-urban-a-term-plagued-by-racial-stereotypes-came-to-be-used-to-describe-black-musicians/?sh=7c2cb16346e7>; *The Racially Charged Meaning Behind The Word 'Thug'*, *All Things Considered*, NPR (Apr. 30, 2015), <https://www.npr.org/2015/04/30/403362626/the-racially-charged-meaning-behind-the-word-thug>.

individuals' identity based on who they *are* rather than who they *are not*, which is why terms like "minority" or "non-white," which define people as othered with respect to the majority group, should be avoided.<sup>71</sup>

The nuances of identity are individual, and you should default to the labels someone uses to identify themselves. It is important to be aware of the nuance of terminology, and that there are differences, even between terms that are, colloquially, used synonymously or differently. For instance, the terms African American and Black are not interchangeable, as the former implies a recent connection to an African nation (e.g., recent immigrant) and the latter may more aptly be used to describe people whose connection to Africa is more distant (e.g., Caribbean immigrants who identify as Black but not African).<sup>72</sup> Further, the term Black is capitalized and should be used as an adjective rather than a noun.<sup>73</sup>

Other groups' identity language requires similar sensitivity to nuance, history, and current social use. For instance, many Native American groups prefer to be identified by tribal membership (e.g., Seminole, Cherokee,

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<sup>71</sup> Lorraine Bannai & Anne Enquist, *(Un)examined Assumptions and (Un)intended Messages: Teaching Students to Recognize Bias in Legal Analysis and Language*, 27 SEATTLE U. L. REV. 1, 18 (2003) (discussing the use of "positive" terms, such as "people of color," rather than describing an individual or community as what they are not, e.g., non-white).

<sup>72</sup> *Id.*

<sup>73</sup> *Explaining AP Style on Black and White*, ASSOC. PRESS (July 20, 2020), <https://apnews.com/article/archive-race-and-ethnicity-9105661462> ("AP's style is now to capitalize Black in a racial, ethnic or cultural sense, conveying an essential and shared sense of history, identity and community among people who identify as Black, including those in the African diaspora and within Africa.").

Alaskan Native, etc.).<sup>74</sup> Some use the term Native American, indigenous, or Indian, but some strongly disfavor the use of particular terms.<sup>75</sup> To proffer another example: “Asian refers to people who are citizens of countries in the Far East, Southeast Asia or the Indian subcontinent, or to describe people of Asian descent,” the term “Pacific Islanders includes Native Hawaiian, Samoan, Guamanian, Fijian and other peoples of the Pacific Island nations,” and “Asian/Pacific Islander or Asian American and Pacific Islander (AAPI) refers to this population in its entirety.”<sup>76</sup> Hispanic, used to indicate Spanish origin, is not equivalent to Latino, which “refers to (almost) anyone born in or with ancestors from Latin America and living in the U.S., including Brazilians.”<sup>77</sup> There are also emerging terms in these

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<sup>74</sup> Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs, 84 FED. REG. 1200 (Feb. 1, 2019), <https://www.govinfo.gov/content/pkg/FR-2019-02-01/pdf/2019-00897.pdf> (“This notice publishes the current list of 573 Tribal entities recognized by and eligible for funding and services from the Bureau of Indian Affairs (BIA) by virtue of their status as Indian Tribes.”); *see also Territory Acknowledgement*, NATIVE LAND DIGIT., <https://native-land.ca/resources/territory-acknowledgement/> (last visited Jan. 29, 2023).

<sup>75</sup> Dacoda McDowell-Wahpekeche, *Which Is Correct? Native American, American Indian or Indigenous?*, OKLAHOMAN (Apr. 22, 2021, 6:01 AM), <https://www.oklahoman.com/story/special/2021/04/22/what-do-native-people-prefer-called/4831284001/> (“‘American Indian’ . . . or ‘Indian’” is a “misnomer” because it may confuse individuals who come from India, as “there are Indian Americans who come from south Asia.”).

<sup>76</sup> *Asian, Asian American, Pacific Islander*, Adelphi Univ., <https://www.adelphi.edu/brand/messaging/guide-to-inclusive-language/> (last visited Aug. 1, 2023) (original emphasis omitted).

<sup>77</sup> *What’s the Difference Between Hispanic and Latino?*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/story/whats-the-difference-between-hispanic-and-latino> (last visited Aug. 1, 2023).

communities, such as Latinx<sup>78</sup> and BIPOC,<sup>79</sup> which have been met both with welcome and dissatisfaction by various community members. Latinx, for instance, is favored as a gender-neutral alternative to Latina or Latino. However, some prefer “elle” or “Latine,” as more consistent with the Spanish language, which can be applied to all terms. “[T]he gender-neutral option with ‘e’ would be ‘le chique alte’ and ‘les chiques altes’” instead of the gendered alternatives, “las chicas altas” or “los chicos altos.”<sup>80</sup>

Courts and clinics alike, reflecting society’s broad range of language, have used a range of terms to reflect racial and ethnic identities. Many clinics ask identity questions upfront, some open-ended, whereas others provide multiple-choice options. To offer one example: Western New England School of Law’s Small Business Legal Clinic provides the following

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<sup>78</sup> See, e.g., Mark Hugo Lopez, Jens Manuel Krogstad & Jeffrey S. Passel, *Who Is Hispanic?*, PEW RSCH. CTR. (Sept. 15, 2022), <https://www.pewresearch.org/fact-tank/2022/09/15/who-is-hispanic/> (“Only 23% of U.S. adults who self-identify as Hispanic or Latino have heard of the term Latinx, and just 3% say they use it to describe themselves, according to a 2019 survey. Awareness and use of the term vary across subgroups, with Hispanics ages 18 to 29 among the most likely to have heard of the term—42% say they have heard of it, compared with 7% of those 65 and older. Some of the most common use of Latinx is among Hispanic women ages 18 to 29—14% say they use it, compared with 1% of Hispanic men in the same age group.”).

<sup>79</sup> Compare Crystal Raypole, *BIPOC: What It Means and Why It Matters*, HEALTHLINE (Nov. 9, 2021), <https://www.healthline.com/health/bipoc-meaning>, with Andrea Plaid & Christopher MacDonald-Dennis, *‘BIPOC’ Isn’t Doing What You Think It’s Doing*, NEWSWEEK (Apr. 9, 2021), <https://www.newsweek.com/bipoc-isnt-doing-what-you-think-its-doing-opinion-1582494>.

<sup>80</sup> Fiona Siobhan Bean, *Les Chiques: The Addition of a Third Gender-Neutral Option in the Spanish Language*, Univ. of Montana, [https://scholarworks.umt.edu/umcur/2021/humanities\\_oral/15/](https://scholarworks.umt.edu/umcur/2021/humanities_oral/15/) (last visited Nov. 1, 2023).

race categories on its optional “Demographic Information” question on legal intake form to prospective clients:<sup>81</sup>

- o Aboriginal or Torres Strait Islander Australian
- o American Indian/Alaskan Native
- o Asian
- o Black or African American
- o Canadian Aboriginal
- o Caucasian/White
- o Native Hawaiian or Other Pacific Islander
- o Latin X
- o Other (Please specify):

This is just one example of the range of options that can be used to solicit information about an individual’s identity, ideally always leaving a write-in option where an individual can specify a term besides those provided.

Identity language use extends far more broadly than initial intakes. The University of Minnesota, for instance, launched the Racial Justice Law Clinic to “teach second and third year students how to engage in direct representation, strategic litigation, and other forms of advocacy as part of a greater movement to advance the rights of Black, Indigenous, Latine/x, Asian-American Pacific Islander, and/or other People of Color.”<sup>82</sup> The clinic goes on to say: “As an institution, we routinely see unmet need . . . that affect the rights and well-being of traditionally under-resourced people . . . we’re [often] talking about BIPOC individuals and communities. Our

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<sup>81</sup> *Small Business Legal Clinic Application*, Western New England Univ., <https://www1.wne.edu/law/centers/center-for-innovation-and-entrepreneurship-application.cfm> (last visited Aug. 1, 2023).

<sup>82</sup> Liliana Zaragosa, *Racial Justice Law Clinic – 7120*, Univ. of Minn., <https://law.umn.edu/course/7120/fall-2022/racial-justice-law-clinic/zaragoza-liliana> (last visited Aug. 1, 2023).

disparities are among the worst in the nation in almost every measure of social welfare and social control.”<sup>83</sup> Other institutions also use the term BIPOC, such as Fordham in its Experiential Learning Anti-Racism Steering Committee statement: “As a result, we have not identified and addressed policies and practices that perpetuate structural racism; have not placed Black, Indigenous, and People of Color (BIPOC) perspectives, voices, and leadership in the forefront; and have not consistently named and countered racism in its implicit and explicit manifestations,”<sup>84</sup> despite its role in the legal professional.<sup>85</sup> Other law schools and clinical programs have adopted similar anti-bias statements.<sup>86</sup> Some law school clinics also use other inclusive terms, such as people or “students of color.”<sup>87</sup>

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<sup>83</sup> Suzy Frisch, *Minnesota Law to Launch Racial Justice Law Clinic*, Univ. of Minn. (Winter 2022), <https://minnesotalawmag.law.umn.edu/stories/racial-justice-clinic>.

<sup>84</sup> *Clinics*, Fordham School of Law, <https://www.fordham.edu/school-of-law/experiential-education/clinics/> (last visited Aug. 1, 2023).

<sup>85</sup> *See, e.g.*, Jeffrey Rachlinski, Andrew J. Wistrich & Bernice B. Donald, Getting Explicit About Implicit Bias, *Judicature* (2020), <https://judicature.duke.edu/articles/getting-explicit-about-implicit-bias/> (discussing unconscious bias in judging); Jerry Kang, Judge Mark Bennett, Devon Carbado, Pam Casey, Nilanjana Dasgupta, David Faigman, Rachel Godsil, Anthony G. Greenwald, Justin Levinson & Jennifer Mnookin, *Implicit Bias in the Courtroom*, 59 UCLA L. Rev. 1124 (2012).

<sup>86</sup> *See, e.g.*, *Legal Clinic Antiracism Statement*, Univ. of Arkansas, <https://ualr.edu/law/clinical-programs/legal-clinic-antiracism-statement/> (last visited Aug. 1, 2023).

<sup>87</sup> *See, e.g.*, *Racial Equity in Education Law and Policy Clinic*, Georgetown Univ. Law Ctr., <https://www.law.georgetown.edu/experiential-learning/clinics/our-clinics/racial-equity-in-education-law-and-policy-clinic/> (last visited Aug. 1, 2023) (“[The] REEL Policy Clinic engages in policy advocacy on behalf of clients to advance racial equity in education. This work includes addressing issues that disproportionately impact the educational experiences and outcomes of students of color, including discriminatory school discipline practices, police

Language for other communities similarly varies. For instance, University of Tennessee’s Legal Clinic “is designed to learn more about the challenges and opportunities in Knoxville’s African American and immigrant communities,”<sup>88</sup> whereas the University of California Irvine describes that “workers are susceptible to unlawful treatment, particularly low-wage immigrant, women, and Black workers.”<sup>89</sup> To consider another institution: Colorado Law offers a Civil Rights & Racial Justice Certificate describes both “American Indian Law” and discusses externships related to “American Indian/indigenous peoples law and policy.”<sup>90</sup> Lewis & Clark Law School’s Small Business Legal Clinic, in discussing its Rural Program “for more equitable access to legal services across the state” noted: “A number of groups provided input, from local chambers of commerce and the Oregon

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presence in schools, school segregation, resource inequities, narrow and punitive assessments, and educational approaches that focus on remediation of students of color.”); *Center for Racial and Disability Justice*, Northwestern Law, <https://www.law.northwestern.edu/research-faculty/racial-disability-justice/> (last visited Aug. 1, 2023) (“Northwestern Pritzker Law Center for Racial and Disability Justice (CRDJ) is a first-of-its-kind center dedicated to promoting justice for people of color, people with disabilities, and individuals at the intersection of race and disability.”).

<sup>88</sup> *Legal Clinic Launches Effort to Study Systemic Racism*, Univ. of Tenn. (Jan. 22, 2021), <https://law.utk.edu/2021/01/22/legal-clinic-launches-effort-to-study-systemic-racism/>.

<sup>89</sup> *Workers, Law, and Organizing Clinic*, Univ. of Cal. Irvine, <https://www.law.uci.edu/academics/real-life-learning/clinics/wlo.html> (last visited Aug. 1, 2023) (“Labor exploitation is facilitated and structured by racism, misogyny, ableism, and other forms of subordination. The immigration and criminal legal systems deepen the vulnerability of low-wage workers.”).

<sup>90</sup> *Civil Rights & Racial Justice*, Colorado Law, <https://www.colorado.edu/law/academics/areas-study/civil-rights-racial-justice> (last visited Aug. 1, 2023).

Native American Chamber to Latinx and rural community organizations.”<sup>91</sup> Also using the term Latinx, the University of Baltimore’s Immigrant Rights Clinic “focuses on providing medical services and health outreach to the Latinx community in the Baltimore area.”<sup>92</sup> McGeorge Law School’s Immigration Clinic, relatedly, notes that “as anti-immigrant sentiment has increased, Asian communities have experienced the effects firsthand” and have resulted in increased deportations.<sup>93</sup>

Utilizing the right terminology to accurately and precisely describe identity, while respecting individual preferences and potential audience norms, requires careful consideration of all aspects of a term’s use, history, and contextualized application.

## **B. Sex, Gender, Gender Identity, & Sexual Orientation**

Understandings of sex, gender, and sexuality have evolved. Sex assigned at birth “(male, female, intersex)” is “often based on the child’s external anatomy.”<sup>94</sup> Gender identity is “[o]ne’s innermost concept of self as

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<sup>91</sup> Daniel F. Le Ray, *The Road to a Successful Business*, Lewis & Clark (Spring 2022), <https://www.lclark.edu/live/news/48637-the-road-to-a-successful-business>.

<sup>92</sup> *Student-Attorney in UB School of Law Immigrant Rights Clinic Describes Working with Latinx Clients*, Univ. of Balt. School of Law (May 20, 2019), <https://ublawaccolades.wordpress.com/2019/05/20/student-attorney-in-ub-school-of-law-immigrant-rights-clinic-describes-working-with-latinx-clients/>.

<sup>93</sup> Kishwer Vikaas, *Immigration Resources for the AAPI Community*, McGeorge School of Law (Nov. 3, 2021), <https://www.mcgeorgelegalclinics.com/2021/11/immigration-resources-for-the-aapi-community/>.

<sup>94</sup> Assigned Sex at Birth, Boston Med. Ctr., <https://www.bmc.org/glossary-culture-transformation/assigned-sex-birth> (last visited Sept. 15, 2023).



male, female, a blend of both or neither.”<sup>95</sup> A cisgender individual is “[a] person whose gender identity is consistent in a traditional sense with their sex assigned at birth.”<sup>96</sup> Transgender is an adjective to “[d]escribe[] a person whose gender identity and sex assigned at birth do not correspond based on traditional expectations” and includes “people who are gender fluid or non-binary.”<sup>97</sup> Gender identity is distinct from gender expression, which is the “[e]xternal appearance of one’s gender identity, usually expressed through behavior, clothing, body characteristics or voice, and which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine.”<sup>98</sup> Sexual orientation describes a person’s “emotional, romantic or sexual attraction to other people.”<sup>99</sup> While some terms have been generally abandoned, such as “homosexual” or “transsexual,” some terms may have different connotations over time or carry different meaning when used in-community versus by those who do not share that identity, like the term “queer.”<sup>100</sup> Language has evolved to encompass a range of identities, such

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<sup>95</sup> Sexual Orientation and Gender Identity Definitions, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/sexual-orientation-and-gender-identity-terminology-and-definitions> (last visited Sept. 15, 2023).

<sup>96</sup> LGBTQ+ Inclusion: Glossary, Univ. of Wis. Med, <https://www.uwmedicine.org/practitioner-resource/lgbtq/lgbtq-inclusion-glossary> (last visited Sept. 15, 2023).

<sup>97</sup> *Id.*

<sup>98</sup> Human Rts. Campaign, *supra* note \_\_\_\_.

<sup>99</sup> *Id.*

<sup>100</sup> Juliette Rocheleau, A Former Slur Is Reclaimed, and Listeners Have Mixed Feelings, NPR (Aug. 21, 2019), <https://www.npr.org/sections/publiceditor/2019/08/21/752330316/a-former-slur-is-reclaimed-and-listeners-have-mixed-feelings> (noting the mixed feelings regarding the use of “queer,” with one listener describing the usage

as the use of “they/them” as a gender neutral pronoun or “Mx.” as a gender neutral honorific.<sup>101</sup>

Gender identity and sexual orientation protections have been widely litigated.<sup>102</sup> Clinics have often discussed women directly in the context of specific work, where women might be overrepresented in needing aid or suffering a unique harm. For example, Domestic Violence Clinics may discuss the gender-based impact of their services, as did Tulane, Cincinnati, and Buffalo.<sup>103</sup> Clinics do not discuss exclusively serving women, however, in

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as “painful” and another sharing “he’s a ‘big fan’ of the word”).

<sup>101</sup> *They*, Merriam-Webster,

<https://www.merriam-webster.com/dictionary/they> (last visited Sept. 15,

2023); *Mx. - A Gender-Neutral Honorific*, Merriam-Webster,

<https://www.merriam-webster.com/wordplay/mx-gender-neutral-title> (last visited Sept. 15, 2023) (adding the word to the dictionary in Sept. 2017).

<sup>102</sup> *See, e.g.*, Nicole Chavez, *Why Montana’s Two-Spirit people are challenging a state law that defines sex as binary*, CNN (Dec. 4, 2023), <https://www.cnn.com/2023/12/04/us/montana-two-spirit-lawsuit-sex-binary-reaj/index.html>; Jodi Fortino, *A Kansas City student teacher’s lawsuit says their gender-neutral pronouns deemed ‘too personal’*, NPR (Mar. 24, 2023), <https://www.kcur.org/news/2023-03-24/a-kansas-city-student-teachers-lawsuit-says-their-gender-neutral-pronouns-deemed-too-personal>; Solcyre Burga, *The Implications of Supreme Court’s 303 Creative Decision Are Already Being Felt*, CNN (July 16, 2023), <https://time.com/6295024/303-creative-supreme-court-future-implications/>.

<sup>103</sup> Domestic Violence Clinic, Tulane Law School,

<https://law.tulane.edu/clinics/dv> (last visited Sept. 15, 2023) (“‘Domestic violence requires a response well beyond either interventions for individual victims or the arrest of individual perpetrators. It requires full community engagement and a recognition of the complex and diverse experiences of women who experience abuse.’ Senior Professor of the Practice, Becki T. Kondkar.”); Domestic Violence & Civil Protection Order Clinic, Univ. of Cincinnati,

<https://law.uc.edu/real-world-learning/clinics/DomesticViolenceandCivilProtectionOrderClinic.html> (last visited Sept. 15, 2023) (discussing collaboration with “University of Cincinnati’s Women’s Center and Women Helping Women” and efforts to ensure “Cincinnati’s YWCA battered women and children’s shelter” retained funding); Family Violence & Women’s Rights Clinic, Univ. of Buffalo, School of Law,

recognition that gender violence can occur to anyone, including men and nonbinary individuals.<sup>104</sup> The Women’s Law Project, for instance, “assist[s] women, men, children, and seniors who are or have been survivors of domestic violence or harassment.”<sup>105</sup> Some clinics may directly target women’s services.<sup>106</sup>

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<https://www.law.buffalo.edu/beyond/clinics/domestic-violence.current-projects.html> (last visited Sept. 15, 2023) (“Clinic students have participated in the annual Teen Dating Violence Summit organized by the Erie County Commission on The Status of Women. Clinic students have developed a domestic violence court watch toolkit, and are working with Zonta and The Erie County Commission on the Status of Women on implementation.”).

<sup>104</sup> See, e.g., Domestic Violence Clinic, Georgetown Univ. L. Ctr., <https://www.law.georgetown.edu/experiential-learning/clinics/our-clinics/domestic-violence-clinic/> (last visited Sept. 15, 2023) (“Students in the Domestic Violence Clinic (DVC) represent victims of intimate abuse in civil protection order (CPO) cases in the D.C. Superior Court.”).

<sup>105</sup> Women’s Law Project, Cal. State Univ. Chico, <https://www.csuchico.edu/clic/womens.shtml> (last visited Sept. 15, 2023).

<sup>106</sup> See, e.g., Women’s Employment Rights Clinic, Golden State Univ. School of Law, <https://law.ggu.edu/academics/clinics/womens-employment/> (last visited Sept. 15, 2023) (“The Clinic’s mission is centered on ensuring that every worker has the right to economic fairness, equal opportunity, and dignity in the workplace. Our mission is to collaborate with grassroots, community-based organizations, and worker centers to enhance their capacity for systemic change.”); International Women’s Human Rights Clinic, <https://www.law.georgetown.edu/experiential-learning/clinics/our-clinics/international-womens-human-rights-clinic/> (last visited Sept. 15, 2023) (“The IWHR Clinic advances women’s human rights globally through partnerships with local women’s human rights non-governmental organizations (‘NGOs’), as well as through research and scholarship.”); Judge Elmo B. Hunter Legal Center for Victims of Crimes Against Women, Southern Methodist Univ. School of Law, <https://www.smu.edu/Law/Clinics/Hunter-Legal-Center> (last visited Sept. 15, 2023) (“Students enrolled in the . . . Clinic provide representation to survivors of gender-based harms, including domestic violence, sexual assault and human trafficking, in a broad range of legal areas. The Hunter Center has partnered . . . to serve women who are most critically in need of legal assistance.”).

Clinics can also use gender-inclusive terminology even when the issue might appear gendered. The use of gender-neutral language, like pregnant people or lactating parent (rather than gendered terms like “pregnant mothers,” “pregnant women,” or “breastfeeding mother”), acknowledges a broader range of gender identities for individuals who are also biologically able to sustain a pregnancy.<sup>107</sup> For instance, New York University’s Reproductive Justice Clinic engages in “legal and policy research and analysis to support community and movement efforts to establish new or better resources for menstruating, pregnant, birthing and parenting people.”<sup>108</sup> However, some are concerned that de-gendering pregnancy can have adverse consequences and gloss over gender-based disparities in health and society more broadly.<sup>109</sup> Gendered terminology is reflected in

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<sup>107</sup> Harmeet Kaur, *The Language We Use to Talk About Pregnancy and Abortion Is Changing. But Not Everyone Welcomes the Shift*, CNN (Sept. 4, 2022), <https://www.cnn.com/2022/09/04/us/abortion-pregnant-people-women-language-wellness-cec/index.html>.

<sup>108</sup> Reproductive Justice Clinic, N.Y. Univ. School of Law, <https://www.law.nyu.edu/academics/clinics/reprojustice> (last visited Sept. 15, 2023).

<sup>109</sup> Brooke Migdon, *Experts Warn Gender-Neutral Language Like ‘Pregnant People’ May Put Mothers at Risk*, Hill (Feb. 1, 2022), <https://thehill.com/changing-america/respect/diversity-inclusion/592335-experts-warn-gender-neutral-language-like> (“Desexing the language of female reproduction has been done with a view to being sensitive to individual needs . . . Yet, this kindness has delivered unintended consequences that have serious implications for women and children . . . includ[ing] ‘dehumanizing’ mothers . . . because alternative, gender-inclusive terms typically involve body parts or physiological processes.”); *see also* Kathy Katella, *Maternal Mortality Is on the Rise: 8 Things To Know*, Yale Medicine (May 22, 2023), <https://www.yalemedicine.org/news/maternal-mortality-on-the-rise> (“Maternal mortality has been rising in the United States. A report from the Centers for Disease Control and Prevention (CDC) counted 1,205 U.S. women who died of maternal causes in 2021, compared with 861 in 2020

clinical use, too, such as in one program's utilization of "pregnant women."<sup>110</sup>

Clinics have also used a range of terms in considering gender identity.<sup>111</sup> Some clinics may use gendered dichotomies that do not reflect a recognition of nonbinary gender identities. For instance, one Veterans Legal Services Clinic offers "students will represent men and women who have served in our country's military and help them access benefits to which they are entitled under federal law."<sup>112</sup> This description leaves out servicemembers who are nonbinary, compounding a history of marginalization and exclusion in military services.<sup>113</sup> Gender-restricted

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and 754 in 2019.").

<sup>110</sup> Reproductive Justice Clinic, Univ. of Cal. Irvine School of Law, <https://www.law.uci.edu/academics/real-life-learning/clinics/reproductive-justice.html> (last visited Sept. 15, 2023) ("Our vision is to promote the reproductive health and rights of women and girls locally, nationally, and internationally through education, research, and legal advocacy. . . . Pregnant women in the United States have experienced punishment.").

<sup>111</sup> See, e.g., *Whose Name Is It, Anyway? Un-gatekeeping the Legal Name Change Process*, <https://www.law.buffalo.edu/links/2023-April/clinic.html> (including pronouns for each individual, e.g., "Associate Professor Heather Abraham (she/her);" "Sean Brosius (he/him);" "Daniel Kahl '24 (they/he);" "Zadaa Ziran Guo '24 (they/them)").

<sup>112</sup> Veterans Legal Services Clinic, Univ. of Ark., <https://ualr.edu/law/clinical-programs/veterans-legal-services-clinic-students/> (last visited Sept. 15, 2023).

<sup>113</sup> Blueprint for Equality: A Transgender Federal Agenda, National Center for Transgender Equality, [https://transequality.org/sites/default/files/docs/resources/NCTE%20Federal%20Blueprint%20Chapter%202014%20Military%20Service\\_0.pdf](https://transequality.org/sites/default/files/docs/resources/NCTE%20Federal%20Blueprint%20Chapter%202014%20Military%20Service_0.pdf) ("Until recently transgender people have served with distinction, but in silence, in every branch of our armed forces. But while the repeal of "Don't Ask, Don't Tell" in 2010 has allowed lesbian, gay, and bisexual troops to serve openly, an estimated over 12,000 transgender service members were still forced to lie about who they are in order to serve their country. On June 30, 2016, the Defense Department announced that transgender service members may live openly without fear of discharge, and the military will adopt policies to

language is often used in potentially exclusionary ways.<sup>114</sup> However, gendered terms may accurately reflect existing social divisions or realities. For example, “[t]he Prisoner Assistance Program, part of Maine Law’s Cumberland Legal Aid Clinic, helps inmates at the Maine Correctional Center in Windham in the Men’s, Women’s, and Pre-Release Units.”<sup>115</sup> Gendered terms may be appropriate for subsets or cohorts where each

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allow qualified transgender individuals to enlist, provide medically necessary care, and support gender transition while serving.”).

<sup>114</sup> See, e.g., *FAQs for Prospective Transnational Worker Rights Clinic Students*, Univ. of Tex., <https://www.usfca.edu/law/engaged-learning/law-clinics> (last visited Sept. 15, 2023) (“You will be providing legal representation to immigrant and low-wage working men and women in active litigation helping them recover unpaid wages, combat employment discrimination, and enforce basic employment rights.”); Civil Rights Appellate Clinic Testimonials, Penn State Law, <https://pennstatelaw.psu.edu/practice-skills/clinics/civil-rights-appellate-clinic/civil-rights-appellate-clinic-testimonials> (last visited Sept. 15, 2023) (“‘The Nittany Lion class-members worked very well and quickly with my firm . . . to protect our men and women in uniform after they get called to the colors to serve our Nation. I am grateful to Prof. Foreman and to his class for their sharp thinking, their tenacity, their ease of expression, and for their great advocacy for our most-deserving client and for all those generations of soldiers, sailors, marines and airmen who are in a position to benefit from any precedent created by winning cert in this matter.’ Adam Augustine Carter, The Employment Law Group, PC”); Veterans Clinic, Baylor Law, <https://www.baylor.edu/law/index.php?id=934140> (last visited Sept. 15, 2023) (“Professor Bridget Fuselier founded the clinic after having witnessed firsthand the many men and women who served their country, only to be forgotten after their years of service.”).

<sup>115</sup> Prisoner Assistance Clinic, Maine Law, <https://mainelaw.maine.edu/academics/clinics-and-centers/clac/prisoner-assistance/> (last visited Sept. 15, 2023).

person's identity is known.<sup>116</sup> They might also be appropriate to denote unique harm to a specific population.<sup>117</sup>

Several clinics directly represent individuals on the basis of gender identity or sexual orientation. However, even groups that work with this community use a variety of terms. "Harvard LGBTQ+ Advocacy Clinic . . . work[s] on cutting-edge issues involving LGBTQ+ rights, with a particular emphasis on issues affecting underrepresented communities within the LGBTQ+ community."<sup>118</sup> So, too, does Gonzaga,<sup>119</sup> although institutions may

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<sup>116</sup> *Compare* Innocence Clinic, Univ. of Mich. School of Law, <https://michigan.law.umich.edu/academics/experiential-learning/clinics/michigan-innocence-clinic-0> (last visited Sept. 15, 2023) ("The first exclusively non-DNA Innocence Clinic in the country, the Michigan Innocence Clinic has successfully won the release of 41 men and women who had been wrongfully convicted of crimes and served anywhere from a few months to 46 years in prison.") *with* Racial Justice Clinic, Univ. of San Francisco, <https://www.usfca.edu/law/engaged-learning/law-clinics> (last visited Sept. 15, 2023) ("The RJC is committed to representing innocent men and women deserving of justice.").

<sup>117</sup> Criminal Defense and Racial Justice Clinic, Univ. of D.C. School of Law, <https://law.udc.edu/criminallawclinic/> (last visited Sept. 15, 2023) ("Black Americans are incarcerated in state prisons at nearly five times the rate of white Americans. Although Black people make up less than half of the District of Columbia population, over 90 percent of people incarcerated in our local jails are Black . . . Clinic students also represent incarcerated individuals, overwhelming Black men and women, seeking release through parole.").

<sup>118</sup> LGBTQ+ Advocacy Clinic, Harvard Law School, <https://hls.harvard.edu/clinics/in-house-clinics/lgbtq-advocacy-clinic/> (last visited Sept. 15, 2023).

<sup>119</sup> LGBTQ+ Rights Clinic, <https://www.gonzaga.edu/school-of-law/clinic-centers/law-clinic/lgbtq-rights-clinic> (last visited Sept. 15, 2023) ("The Lincoln LGBTQ+ Rights Clinic works to protect and advance the equal rights and dignity of individuals who identify as LGBTQ+.").



use a variety of terms.<sup>120</sup> Brooklyn Law's program, by contrast, is labeled the "LGBT Advocacy Clinic":

[The Clinic] represent[s] LGBT people in a variety of civil legal matters . . . including obtaining legal name changes and changing gender markers on identity documents for transgender clients, filing adoption petitions for LGBT parents seeking a legal relationship with their children, assisting LGBT people in obtaining divorces and other family law relief, helping transgender women incarcerated in men's prisons obtain medical care and protection from sexual assault, and filing complaints on behalf of LGBT people facing discrimination at school, at work, or in public accommodations.<sup>121</sup>

### C. Citizenship & Immigration Status

There is a range of terms pertaining to citizenship and immigration status, many of which have both legal and social implications, connoting

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<sup>120</sup> *See, e.g.*, LGBTQIA+ Law, Georgetown Univ. L. Ctr., <https://www.law.georgetown.edu/your-life-career/career-exploration-professional-development/for-jd-students/explore-legal-careers/practice-areas/lgbt-law/> (last visited Sept. 15, 2023) ("Laws affecting lesbian, gay, bisexual, transgender, queer, intersex, and asexual (LGBTQIA+) people vary greatly by country or territory and may include legal issues such as employment discrimination, housing rights, family law, and health law."); Hertfordshire LGBT+ Law Clinic, <https://www.herts.ac.uk/study/schools-of-study/law/hertfordshire-law-clinic/looking-for-legal-advice/hertfordshire-lgbt-law-clinic> (last visited Sept. 15, 2023) ("We offer free legal advice to the LGBT+ community on issues.").

<sup>121</sup> LGBT Clinic, Brooklyn Law, <https://www.brooklaw.edu/Courses/Clinic---LGBT-Advocacy> (last visited Sept. 15, 2023); *see also* Advocacy for the LGBT Practicum, Cornell Law School, <https://www.lawschool.cornell.edu/academics/experiential-learning/clinical-program/advocacy-for-lgbt-practicum/> (last visited Sept. 15, 2023) ("The LGBT practicum is dedicated to achieving equal rights and dignity for lesbian, gay, bisexual, and transgender (LGBT) people."); Veterans Legal Services Clinic, Yale Law School, <https://law.yale.edu/clinics/vlsc> (last visited Nov. 1, 2023) ("The clinic makes special efforts to assist vulnerable veteran populations and those least connected to existing service networks, such as women, recently returned, non-citizen, LGBT, and elderly veterans.").



both legal privileges and public perceptions on a politically wrought issue. The terms “illegal,” “illegal immigrant,” and “alien” should generally be avoided, as they have a dehumanizing valiance.<sup>122</sup> Advocates have suggested the use of less stigmatizing terms, including: “undocumented,” “unauthorized,” “non-citizens,” “without status,” or “unlawfully present.”<sup>123</sup> However, there is no consensus on the use of these terms. For instance, some have an antipathy for the term “undocumented” because it may inaccurately convey a false understanding, as “[m]any illegal immigrants aren’t ‘undocumented’ at all; they may have a birth certificate and passport from their home country, plus a U.S. driver’s license, Social Security card or school ID. What they lack is the fundamental right to be in the United States.”<sup>124</sup> While disfavored terms still often appear in statutes, caselaw, and other legal sources<sup>125</sup> and are, at times, still used by courts,<sup>126</sup> more modern terminology is also utilized.<sup>127</sup>

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<sup>122</sup> Monika Batra Kashyap, “*Illegal*” vs. “*Undocumented*”: A NWIRP Board Member’s Perspective, NW. IMMIGRANT RTS PROJECT , <https://www.nwirp.org/illegal-vs-undocumented-a-nwirp-board-members-perspective/> (last visited Jan. 29, 2023); Nicole Acevedo, *Biden Seeks to Replace ‘Alien’ with Less ‘Dehumanizing Term’ in Immigration Laws*, NBC NEWS (Jan. 22, 2021), <https://www.nbcnews.com/news/latino/biden-seeks-replace-alien-less-dehumanizing-term-immigration-laws-n1255350>.

<sup>123</sup> Kashyap, *supra* note \_\_\_\_.

<sup>124</sup> *Id.*

<sup>125</sup> *See, e.g., Jane W. v. Thomas*, 560 F. Supp. 3d 855, 883 (E.D. Pa. 2021) (discussing the Alien Tort Statute, 28 U.S.C. § 1350).

<sup>126</sup> *See, e.g., State v. Dep’t of Com.*, No. CV 21-1523, 2022 WL 17251152, at \*3 (E.D. La. Nov. 28, 2022) (referencing “illegal immigrants” in discussion of state standing).

<sup>127</sup> *See, e.g., United States v. Dasilva*, No. 3:21-CR-267, 2022 WL 17242870, at \*6 (M.D. Pa. Nov. 23, 2022) (using the term “undocumented individuals” in considering whether Second Amendment protections are available to noncitizens).

Clinics have typically used modern terms in describing immigration-related issues or identity status pertaining to citizenship. For instance, Stanford's Immigrants' Rights Clinic discussed representing an "asylum seeker"<sup>128</sup> and "longtime [ ] area resident,"<sup>129</sup> using these terms to describe the nature of the client's petition and current community ties. Relatedly, the "first and only dedicated in-house Immigration Clinic in the state of Georgia" uses term "non-citizen"<sup>130</sup> as does Duke.<sup>131</sup> To give another example, the Immigration Litigation & Appellate Clinic at the University of Idaho allows "students [to] help immigrants who may be seeking asylum, permanent resident status, citizenship, status under the Violence Against

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<sup>128</sup> IRC Students Successfully Represent Asylum Seeker, Stanford Law, <https://law.stanford.edu/immigrants-rights-clinic/#slnav-overview> (last visited Sept. 15, 2023) ("[Students] represented D, a young woman from Ethiopia seeking asylum after experiencing persecution due to her ethnic identity.").

<sup>129</sup> IRC Students Represent Longtime Bay Area Resident in Deportation Case, Stanford Law, <https://law.stanford.edu/immigrants-rights-clinic/#slnav-overview> (last visited Sept. 15, 2023) ("L was ordered deported years ago because of a single criminal conviction from over 20 years ago.").

<sup>130</sup> Immigration Clinic, Georgia State Law, <https://law.gsu.edu/student-experience/experiential-learning/clinics/immigration-clinic/> (last visited Sept. 15, 2023) ("Through the Georgia State Law Immigration Clinic students develop and practice fundamental lawyering skills, including interviewing, counseling, fact investigation, legal research and writing, and courtroom fundamentals as they work on the cases of low-income non-citizens.").

<sup>131</sup> Immigration Clinic, Duke Law School, <https://law.duke.edu/immigrantrights/> (last visited Nov. 1, 2023) ("The Immigrant Rights Clinic represents individuals facing deportation and partners with local, state, and national organizations to promote access to resources, education, and justice for non-citizens. The clinic engages students in efforts to advance the rights of non-citizens through litigation, education and outreach, and policy advocacy.").

Women Act (VAWA) and relief from removal” and refer to their “clients.”<sup>132</sup> Other clinics have also generally used the term “immigrants,” “refugees,” or “noncitizens.”<sup>133</sup> This language acknowledges an individual’s personhood, apart from their legal status. The University of Maryland avoids labels and describes their clients’ experiences: “You will represent individuals fleeing

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<sup>132</sup> Immigration Clinic, Univ. of Idaho, <https://www.uidaho.edu/law/academics/experiential-learning/clinics/immigration> (last visited Sept. 15, 2023); *see also* Immigration Practice Clinic, Vanderbilt Law School, <https://law.vanderbilt.edu/academics/clinical-legal-education/immigration-practice-clinic/index.php> (last visited Nov. 1, 2023) (discussing “represent[ation of] vulnerable low-income immigrants from all over the world”).

<sup>133</sup> *See, e.g.*, Refugee & Human Rights Clinic, Univ. of Maine, <https://mainelaw.maine.edu/academics/clinics-and-centers/clac/refugee-and-human-rights> (last visited Sept. 15, 2023) (“The RHRC and its attorneys target a critical gap in access to justice – providing direct legal representation and broader advocacy to immigrants and refugees seeking political asylum and similar protections under federal law.”); Immigrant Rights Clinic, Univ. of Baltimore, <http://law.ubalt.edu/clinics/immigrantrights.cfm> (last visited Sept. 15, 2023) (“[S]tudents may collaborate on one issue related to systemic law reform to improve the procedures and laws that shape our immigrant clients’ lives.”); Federal Appellate Immigration Clinic, Univ. of Md., <https://www.law.umaryland.edu/academics/clinics/federal-appellate-immigration-clinic/> (last visited Sept. 15, 2023) (“In these appellate forums, [students] will advocate for [their] clients while working to develop favorable precedents on systemic issues affecting noncitizens who face deportation or immigration imprisonment.”); Immigration Clinic, Roger Williams School of Law, <https://law.rwu.edu/academics/juris-doctor/clinics-and-externships/immigration-clinic> (last visited Sept. 15, 2023) (“Students enrolled in the Immigration Clinic represent indigent immigrants who are seeking lawful permanent residence in the United States or are seeking to defend against removal proceedings.”); Transnational Legal Clinic, Univ. of Penn., <https://www.law.upenn.edu/clinic/transnational/> (last visited Nov. 1, 2023) (“[S]tudents have represented individuals seeking asylum and other forms of immigration relief from across the globe and have worked alongside and on behalf of international human rights and community-based organizations before regional and international human rights mechanisms on a range of rights-based issues, particularly as they relate to migrants and internally-displaced persons.”).

persecution, those facing deportation because of criminal conviction, and those who have been the target of abusive enforcement practices.”<sup>134</sup>

#### **D. Disability & Medical Conditions**

Describing individuals’ health conditions can be extremely fraught. While people-first framing is often preferred to center the individual over their identity (e.g., “people with disabilities”), some individuals or communities prefer identity-first framing<sup>135</sup> (e.g., “autistic adult” or “Deaf person”).<sup>136</sup> Some terms have evolved to remove their stigmatization, such as the term “substance use disorder,” which has been used to replace “substance abuse,” “substance misuse disorder,” “addict,” “junkie,” and “abuser,” among others.<sup>137</sup> There are many terms in our vernacular that are ableist, including many metaphors and idioms (e.g., “turn a deaf ear,”

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<sup>134</sup> Immigration Clinic, Univ. of Maryland, <https://www.law.umaryland.edu/academics/clinics/immigration-clinic/> (last visited Nov. 1, 2023).

<sup>135</sup> People First Language, OFFICE OF DISABILITY RTS., D.C., <https://odr.dc.gov/page/people-first-language> (last visited Sept. 15, 2023).

<sup>136</sup> See Amanda Taboas, Karla Doepke & Corinne Zimmerman, Short Report: Preferences for Identity-First Versus Person-First Language in a US Sample of Autism Stakeholders, NAT’L AUTISTIC SOC ’Y (Oct. 13, 2022), <https://doi.org/10.1177/1362361322113084> (surveying affected individuals who described a preference for “identity-first language”); see also *Interpreter Etiquette & the Do’s and Don’ts of Working with an Interpreter*, Office of Court Interpreting Services, D.C. C TS. (Apr. 8, 2022), <https://www.dccourts.gov/sites/de-fault/files/divisionspdfs/Dos-and-Donts-When-Working-With-an-Interpreter.pdf> (utilizing “Deaf persons”).

<sup>137</sup> Words Matter - Terms to Use and Avoid When Talking About Addiction, NAT’L INST ON DRUG ABUSE, NAT’L INST. HEALTH (Nov. 29, 2021), <https://nida.nih.gov/nidamed-med-ical-health-professionals/health-professions-education/words-matter-terms-to-use-avoid-when-talking-about-addiction>.

“dragging one’s feet,” and “turn a blind eye”)<sup>138</sup> and ordinary turns of phrase (e.g., insane,” “psycho,” “lame,” “moronic,” and “crazy”).<sup>139</sup> For example, courts have colloquially used the term “schizophrenic” to mean contradictory or illogical outcomes,<sup>140</sup> despite being a negative derivation of the medical condition “schizophrenia,” the effects of which can include “disruptions in thought processes, perceptions, emotional responsiveness, and social interactions.”<sup>141</sup>

There are several clinics that practice disability law and use the name in their clinic title and/or description of their work,<sup>142</sup> and some have

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<sup>138</sup> Cameron Hunt McNabb, Ableist Language - Disability Metaphors - Disability Studies, Writing Commons, <https://writingcommons.org/section/style/elements-of-style/inclusive-language/disability-studies-abelist-language-inappropriate-disability-metaphors/> (last visited Sept. 15, 2023).

<sup>139</sup> Monica Torres, Instead of These Ableist Words, Use Inclusive Language at Work, Huff. Post (July 8, 2022), [https://www.huffpost.com/entry/disability-language-work\\_1\\_5f85d522c5b681f7da1c3839](https://www.huffpost.com/entry/disability-language-work_1_5f85d522c5b681f7da1c3839).

<sup>140</sup> *See, e.g., Wilbers v. Moneta Grp. Inv. Advisors, Inc.*, No. 406CV00005 ERW, 2006 WL 1360866, at \*2 (E.D. Mo. May 17, 2006) (“Although the Supreme Court has indicated the broad scope of the phrase, ‘[t]hat locution is not self-defining, and the Justices have been at least mildly schizophrenic in mapping its contours.’”) (quoting *Minn. Chapter of Associated Builders and Contractors, Inc. v. Minn. Dep’t of Pub. Safety*, 267 F.3d 807, 811-12 (8th Cir. 2001)).

<sup>141</sup> Schizophrenia, Nat’l Inst. of Health, <https://www.nimh.nih.gov/health/statistics/schizophrenia> (last visited Sept. 15, 2023).

<sup>142</sup> *See, e.g.,* Community Law Clinic, Penn State, <https://dickinsonlaw.psu.edu/community-law-clinic> (last visited Sept. 15, 2023) (“For those underserved populations living near or below the poverty line, the Community Law Clinic represents the way forward in matters of family law, disability law, and other areas where they need legal assistance.”); Disability Rights Clinic, Syracuse, <https://law.syracuse.edu/academics/experiential-courses-clinics-externships/clinics/disability-rights-clinic/> (last visited Sept. 15, 2023) (The Disability Rights Clinic (DRC) is dedicated to providing representation to individuals with disabilities as well as groups representing the disabled

renamed to evince evolutions in terminology.<sup>143</sup> Clinics have also used the following terms: “people with disabilities,”<sup>144</sup> “disabled individuals,”<sup>145</sup> “adults with intellectual and developmental disabilities,”<sup>146</sup> “disability rights,”<sup>147</sup> and “disability justice.”<sup>148</sup> Clinics may use more general health-

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community.”); Olmstead Disability Rights Clinic, Georgia State Univ., <https://law.gsu.edu/student-experience/experiential-learning/clinics/olmstead-disability-rights-clinic/> (last visited Sept. 15, 2023) (“Students have the opportunity to advocate on behalf of children and adults with disabilities in special education cases, administrative proceedings, and potential federal litigation.”).

<sup>143</sup> Disability Inclusion and Advocacy Law (DIAL) Clinic, Nova College of Law, <https://www.law.nova.edu/clinics/in-house/dial-clinic.html> (last visited Sept. 15, 2023) (“The Disability Inclusion and Advocacy Law (DIAL) Clinic (formerly known as the Adults with Intellectual & Developmental Disabilities (AIDD) law clinic) introduces law students to legal practice advocating for the civil rights of persons with disabilities.”).

<sup>144</sup> See, e.g., Disability Rights and Justice Clinic, N.Y. Univ. School of Law, <https://www.law.nyu.edu/academics/clinics/DisabilityRights> (last visited Sept. 15, 2023) (“The Disability Rights and Justice Clinic advocates to enhance and promote the civil rights, autonomy, and self-determination of low-income individuals with disabilities.”); Jeanne Leblanc, *UConn Law and Disability Rights Connecticut Establish Legal Clinic*, UConn (Sept. 12, 2022), <https://today.uconn.edu/2022/09/uconn-law-and-disability-rights-connecticut-establish-legal-clinic/#> (“The UConn School of Law has joined forces with [Disability Rights Connecticut](#) to offer a clinic providing legal advocacy for people with disabilities.”); see also Disability Law Clinic, Wayne State Univ., <https://law.wayne.edu/academics/clinics/disability> (last visited Sept. 15, 2023) (describing “residents with disabilities”); Workers’ Rights Disability Law Clinic, Berkeley Law, <https://www.law.berkeley.edu/experiential/pro-bono-program/slps/inactive-student-initiated-legal-services-projects-slps/workers-rights-disability-law-clinic-wrdlc/> (last visited Sept. 15, 2023) (discussing work on behalf of “workers with disabilities”); Disability Rights Clinic, Univ. of Tex. Austin, <https://law.utexas.edu/clinics/disability-rights/> (last visited Sept. 15, 2023) (representing “clients with disabilities”).

<sup>145</sup> Elder & Disability Law Clinic, William & Mary School of Law, [https://law.wm.edu/academics/programs/jd/electives/clinics/clinics\\_list/elder/](https://law.wm.edu/academics/programs/jd/electives/clinics/clinics_list/elder/) (last visited Sept. 15, 2023) (“The Elder & Disability Law Clinic provides free legal assistance for qualifying seniors and disabled individuals.”).



related language,<sup>149</sup> or allude to the scope of client eligibility or service offerings.<sup>150</sup>

Clinics have, at times, described their work on behalf of individuals, “adults and children [to] obtain much needed disability benefits from the

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<sup>146</sup> Disability and Civil Rights Clinic, Brooklyn Law, <https://www.brooklaw.edu/Academics/Clinics-and-Externships/In-House-Clinics/Disability-and-Civil-Rights-Clinic> (last visited Sept. 15, 2023) (“The Disability and Civil Rights Clinic focuses on protecting and advancing the civil rights of adults with intellectual and developmental disabilities . . . [and] functions as a pro bono law firm representing low-income New Yorkers, and their families in a variety of civil legal matters, including housing, public benefits, access to health care, special education, parental rights, alternatives to guardianship, prisoners’ rights and discrimination in access to programs and services.”).

<sup>147</sup> Veterans Law and Disability Benefits Clinic, Harvard Law School, <https://hls.harvard.edu/clinics/in-house-clinics/veterans-law-and-disability-benefits-clinic/> (last visited Sept. 15, 2023) (“Enrolled students have frequent opportunities to interact with medical providers and medical experts and to work on cases at the intersection of disability rights, disability access, mental health and the law.”).

<sup>148</sup> Civil Rights and Disability Justice Clinic, N.Y. Law School, <https://www.nyls.edu/civil-rights-and-disability-justice-clinic/> (last visited Sept. 15, 2023) (“[S]tudents will work under close faculty supervision and in partnership with community members, grassroots groups, and legal organizations to litigate cases and develop advocacy related to a range of civil rights and disability justice issues including racial, economic, and criminal justice, and education, housing, and voting rights.”).

<sup>149</sup> Health and Disability Law Clinic, Univ. of Va., <https://www.law.virginia.edu/clinics/health-and-disability-law-clinic> (last visited Sept. 15, 2023) (“Clients’ health needs include public benefits claims (including Medicaid, Social Security, Medicare and other benefits); insurance coverage; obtaining access to mental health or rehabilitative services; and seeking justice for the mistreatment of seniors and those with disabilities in various contexts.”).

<sup>150</sup> Disability Rights Clinic, American Wash. College of Law, <https://www.wcl.american.edu/academics/experientialedu/clinical/theclinics/disability/> (last visited Sept. 15, 2023) (“The DRLC is a two-semester clinic in which law students represent clients and their families in a variety of matters related to disability law and people with disabilities (both mental and physical).”).

Social Security Administration (SSI and SSDI).”<sup>151</sup> This framing focuses on the services and benefits to which individual are entitled, rather on the person’s actual qualifying health condition. Stanford’s Community Law Clinic goes on to describe their “clients [as] adults and children in our local community who are unable to work on a full time basis due to mental and/or physical disabilities.”<sup>152</sup> “By preparing the cases and putting on a strong case at hearing, CLC students are able to secure life-changing benefits for a majority of [the] clients” by helping them navigate the complex SSDI process, humanizing the individuals in the administrative process.<sup>153</sup>

### **E. Criminal Legal**

Courts often use deeply entrenched terms to refer to criminal defendants.<sup>154</sup> However, some courts have used more favorable terms, including “criminal legal system” in lieu of “criminal justice” acknowledges the wrongful treatment of individuals in the carceral system because of inequity based on race, poverty, mental illness, housing instability, and substance use.<sup>155</sup> Moreover, utilizing “incarcerated person” or other person-

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<sup>151</sup> Community Law Clinic, Social Security Disability, <https://law.stanford.edu/community-law-clinic/social-security-disability> (last visited Sept. 15, 2023).

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *See, e.g., Johnson v. Governor of State of Fla.*, 405 F.3d 1214, 1216 (11th Cir. 2005) (discussing “challenge to Florida’s felon disenfranchisement law”); *Martinez v. State*, 1989-NMSC-026, ¶ 1, 108 N.M. 382, 383, 772 P.2d 1305, 1306 (stating that “meritorious deductions may not shorten the basic thirty-year term of capital felons”).

<sup>155</sup> *See, e.g., United States v. French*, 977 F.3d 114, 118 (1st Cir. 2020) (“Juror 86 had not disclosed this information about her son’s involvement in the criminal legal system on a questionnaire that the Clerk’s Office



first framings, instead of “inmate” or “felon,”<sup>156</sup> is recommended.<sup>157</sup> Person-first language separates a crime from the person and ensures an individual is not flattened to one aspect of their identity. Using “incarcerated people”; “imprisoned people”; “people in prison/jail”; “people jailed in X facility”; “John Doe, who was incarcerated at F[ederal] C[orrectional] I[nstitute]”; or “Jane Doe, who is serving 12 years in [ ] State Prison” exemplify this trend.<sup>158</sup> Person-first language can also apply to post-incarceration labels: “offender,” “parolee,” or “probationer,” among others.<sup>159</sup>

This same full range of terms is used by clinics in their advocacy practices. Yale, for instance, uses the term “criminal legal system” in

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distributed to her when she was called for jury duty in October 2013, prior to jury selection.”); *State v. Tesfasilasye*, 518 P.3d 193, 200 (Wash. May 19, 2022) (“One of the State’s proffered reasons for the strike—that the juror might be biased because her son had, in her view, been treated unfairly by the criminal legal system—is presumptively invalid.”); *Baker v. 3M Co. Inc.*, No. 5:19-CV-00704-AKK, 2020 WL 6750805, at \*2 (N.D. Ala. Oct. 15, 2020) (noting complainant “had multiple encounters with the criminal legal system”).

<sup>156</sup> *Green v. Mass. Dep’t of Corr.*, No. 2184CV02283C, 2021 WL 6335670, at \*1 (Mass. Super. Nov. 30, 2021) (alleging plaintiffs “and other incarcerated persons have been deprived of their due process rights and right to counsel”); *Remick v. City of Phila.*, No. CV 20-1959, 2021 WL 4269171, at \*1 (E.D. Pa. Sept. 14, 2021) (discussing “programming, visits, and movement of incarcerated persons”).

<sup>157</sup> See, e.g., *Goodvine v. Duckert*, No. 22-CV-204-PP, 2022 WL 14813062, at \*1 (E.D. Wis. Oct. 26, 2022) (noting “plaintiff was incarcerated when he filed his complaint”); *Valentine v. Collier*, No. 4:20-CV-1115, 2020 WL 3666614, at \*1 (S.D. Tex. July 6, 2020) (“Pending before the Court are three Motions to Intervene filed by individuals incarcerated at Texas Department of Criminal Justice (TDCJ) prisons other than the Pack Unit, which is the prison at issue in the present case.”).

<sup>158</sup> Akiba Solomon, *What Words We Use — and Avoid — When Covering People and Incarceration*, Marshall Project (Apr. 12, 2021), <https://www.themarshallproject.org/2021/04/12/what-words-we-use-and-avoid-when-covering-people-and-incarceration>.

<sup>159</sup> *Id.*

describing its Criminal Justice Advocacy Clinic,<sup>160</sup> as does Vanderbilt's Youth Opportunity Clinic in discussing "criminal legal involvement,"<sup>161</sup> while some use criminal justice.<sup>162</sup> Other clinics, at UCLA and Stanford, use non-stigmatizing terms like "community members," "members of our community accused of crimes," or "clients."<sup>163</sup> Several clinics also used the term

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<sup>160</sup> *Criminal Justice Advocacy Clinic*, Yale Law School, <https://law.yale.edu/studying-law-yale/clinical-and-experiential-learning/our-clinics/criminal-justice-advocacy-clinic> (last visited July 10, 2023) ("Students in the Criminal Justice Advocacy Clinic (CJAC) represent individuals and organizations affected by the criminal legal system.").

<sup>161</sup> *Youth Opportunity Clinic*, Vanderbilt Law School, <https://law.vanderbilt.edu/courses/427> (last visited July 10, 2023) ("Students enrolled in the Youth Opportunity Clinic represent young people (aged 16-25) who are at risk for criminal legal involvement by providing civil legal representation that will help them access opportunities in the areas of education, secure housing, and employment.").

<sup>162</sup> *Children's Rights Clinic*, Univ. of Alabama, <https://www.law.ua.edu/academics/law-clinics/childrens-rights-clinic/> (last visited July 10, 2023) ("The Children's Rights Clinic in conjunction with the Alabama Disabilities Advocacy Program works to ensure that youth with disabilities involved in the juvenile justice system have their disability needs met and their rights protected.").

<sup>163</sup> *Criminal Defense Clinic*, UCLA, <https://law.ucla.edu/academics/experiential-program/law-clinic-courses/criminal-defense-clinic> (explaining students "help[]community members to obtain post-conviction relief, such as pardons and clemency"); *Fact Sheet About Gubernatorial Pardons in California*, UCLA (June 4, 2019), <https://www.ilrc.org/resources/fact-sheet-about-gubernatorial-pardons-california> (discussing Governor's pardon power for "persons convicted of California state crimes"); *Criminal Defense Clinic*, Stanford, <https://law.stanford.edu/criminal-defense-clinic/#slnav-people> ("Each student represents members of our community accused of crimes"; "Clinic students are their clients' primary legal representatives in and out of court.").

“defendants,”<sup>164</sup> “adults charges with criminal offenses,”<sup>165</sup> or otherwise refer to “indigent clients.”<sup>166</sup> For those with convictions, people-first language can still center personhood: “people incarcerated for felonies.”<sup>167</sup> The use of inclusive language is reflected in various clinics’ advocacy.<sup>168</sup> Sometimes the use of the term “felon,” such as in reference to the name of

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<sup>164</sup> See, e.g., *Clinics*, Samford Cumberland School of Law, <https://www.samford.edu/law/clinics> (last visited July 10, 2023) (“The Capital Defense Clinic allows students to work with the Jefferson County Public Defender’s Office to assist in representing defendants who face capital charges.”).

<sup>165</sup> *Clinical Courses*, Vanderbilt Law School, <https://law.vanderbilt.edu/academics/clinical-legal-education/clinical-courses.php> (last visited July 10, 2023) (“Students enrolled in Criminal Practice Clinic represent adults charged with criminal offenses and children charged with criminal offenses and delinquency.”).

<sup>166</sup> *Criminal Defense Clinic*, Drake Law School, <https://www.drake.edu/law/clinics-centers/clinic/criminal-defense/> (last visited July 10, 2023) (“The clinic contracts with the Iowa State Public Defender’s Office to represent indigent clients who have requested a public defender.”); see also *Criminal Defense Clinic*, Colorado Law, <https://www.colorado.edu/law/academics/clinics/criminal-defense-clinic> (last visited July 10, 2023) (“The Criminal Defense Clinic offers law students the opportunity to represent indigent clients charged with misdemeanor and municipal offenses in Boulder and Jefferson Counties. The clinic provides high-quality legal services to clients and serves the community at large by providing legal assistance to those too poor to otherwise afford a lawyer.”).

<sup>167</sup> Wrongful Convictions Clinic, Duke Law School, <https://law.duke.edu/wrongfulconvictions/> (last visited Nov. 1, 2023) (“The Wrongful Convictions Clinic investigates plausible claims of innocence made by people incarcerated for felonies in North Carolina.”).

<sup>168</sup> See, e.g., *Fact Sheet About Gubernatorial Pardons in California*, UCLA (June 4, 2019), <https://www.ilrc.org/resources/fact-sheet-about-gubernatorial-pardons-california> (discussing Governor’s pardon power for “persons convicted of California state crimes”); *Criminal Defense Clinic*, Stanford, <https://law.stanford.edu/criminal-defense-clinic/#slnav-people> (last visited July 10, 2023) (“Each student represents members of our community accused of crimes”; “Clinic students are their clients’ primary legal representatives in and out of court.”).

the offense (e.g., “felon in possession of a firearm”), or in describing scope of work or eligibility for services.<sup>169</sup>

However, not all clinics use these terms consistently. For instance, one clinic at Samford University describes how “students work on potential innocence claims of several Alabama prisoners” in its Innocence Clinic.<sup>170</sup> The Drake Wrongful Convictions Clinic describes its program as “provid[ing] students with the opportunity to investigate and contribute to work on post-conviction litigation for Iowa inmates.”<sup>171</sup> Emory uses the term “offenders” in explaining: “Students in the Appeal for Youth Clinic provide holistic appellate representation of youthful offenders in the juvenile and

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<sup>169</sup> See *Supreme Court Takes Clinic Case on Challenges to Convictions*, UVA (May 17, 2022), <https://www.law.virginia.edu/news/202205/supreme-court-takes-clinic-case-challenges-convictions> (“Jones filed a motion to vacate his sentence in a 2000 conviction for being a felon in possession of a firearm.”); see also Juvenile Justice Clinic, Cornell Law School, <https://www.lawschool.cornell.edu/academics/experiential-learning/clinical-program/juvenile-justice-clinic/> (last visited Nov. 1, 2023) (“The clinic works closely with Justice 360-SC, a nonprofit that represents death-sentenced inmates and juveniles in South Carolina.”); Capital Punishment, Cornell Law School, <https://www.lawschool.cornell.edu/academics/experiential-learning/clinical-program/capital-punishment-clinic/> (last visited Nov. 1, 2023) (“Our clients are prison inmates, usually from the American South, who are challenging their convictions and sentences in the state and federal courts.”); Michigan Innocence Clinic, Michigan Law School, <https://michigan.law.umich.edu/academics/experiential-learning/clinics/michigan-innocence-clinic-0> (last visited Nov. 1, 2023) (“Information for Convicted People”).

<sup>170</sup> Samford Cumberland School of Law, *supra* note \_\_\_\_.

<sup>171</sup> *Wrongful Convictions Clinic*, Drake Law School, <https://www.drake.edu/law/clinics-centers/clinic/wrongfulconvictionsclinic/> (last visited July 10, 2023).

criminal justice systems.”<sup>172</sup> These clinics utilize potentially less-preferred terms while working to further equity within these communities.

## **F. Survivors & Victims**

Courts have used both the terms “victim” and “survivor” to describe those affected by crime.<sup>173</sup> The word “victim” can both carry sympathy and compassion for someone who has been injured, the label can also be understood to “imply weakness, assume guilt, or assign blame.”<sup>174</sup> “Survivor” can be considered an empowering label that centers an individual’s recovery process. Affected individuals may prefer one label over the other, embrace the use of both terms, or prefer another descriptor, like “victim-survivor.”<sup>175</sup> As such, both the term victim and survivor are routinely used.<sup>176</sup>

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<sup>172</sup> *Barton Appeal for Youth Clinic*, Emory School of Law, <https://law.emory.edu/academics/clinics/faculty-led-clinics/barton-appeal-for-youth-clinic.html> (last visited July 10, 2023).

<sup>173</sup> *See, e.g., Victims & Survivors*, Crime Victim and Survivor Services Division, OR. DEP’T OF JUSTICE, <https://www.doj.state.or.us/crime-victims/> (last visited July 10, 2023).

<sup>174</sup> VICTIM OR SURVIVOR: TERMINOLOGY FROM INVESTIGATION THROUGH PROSECUTION, SEXUAL ASSAULT KIT INITIATIVE, at 1, <https://sakitta.org/toolkit/docs/Victim-or-Survivor-Terminology-from-Investigation-Through-Prosecution.pdf> (last visited July 10, 2023).

<sup>175</sup> *Id.* at 1; *see also Survivor, Victim, Victim-Survivor*, UPSETTING RAPE CULTURE, <https://upsettingrapeculture.com/survivor-victim/> (last visited July 29, 2023).

<sup>176</sup> *Compare State in Int. of L.R.*, No. 2021-C-0141, 314 So. 3d 1139, 1141 (La. App. 4 Cir. 2021) (“The issue before this Court, is the extent of a victim’s right to be heard in a juvenile court proceeding: specifically, whether the victim of a delinquent act has standing to petition or motion a juvenile court to act.”) *with Fox v. State*, 640 S.W.3d 744, 753 (Mo. 2022) (discussing state’s assertion that “preventing sexual assault survivors from incurring secondary trauma due to interactions with the criminal justice system [wa]s a[] compelling interest”).

Reflecting these aspects of practice, clinics also utilize a range of labels in their practice. Several clinics use victim-survivor, victim/survivor, or a combination of the terms.<sup>177</sup> However, some use just the term

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<sup>177</sup> See, e.g., *Child and Family Law Clinic*, Univ. of Ariz. College of Law, <https://law.arizona.edu/academics/clinics/child-and-family-law-clinic> (last visited July 20, 2023) (“Clinic students provide representation to adults and teenagers in contested order of protection hearings to ensure that the order is upheld without modifications that pose a risk to the safety of the victim-survivor.”); *Restraining Order & Survivor Advocacy Clinic*, Univ. of Wisconsin-Madison Law School, <https://law.wisc.edu/eji/rosa/> (last visited July 30, 2023) (“Law students assist victims/survivors of intimate-partner violence and/or crime by assisting with Restraining Order petitions, providing direct representation at injunction hearings (restraining order hearings), and providing relevant resources under the supervision of experienced clinical faculty. In addition, the Clinic seeks to assist victims/survivors with additional legal needs consistent with victims’ rights under Wisconsin’s Marsy’s Law.”); *Harvard Law School’s Marianna Yang Examines Rise in Factors, Hurdles in Courts for Victims*, Family Law and Domestic Violence Clinic, Harvard Law School (June 30, 2022), <https://www.legalservicescenter.org/harvard-gazette-shadow-pandemic-of-domestic-violence> (using “victim/survivor”).

“victim”<sup>178</sup> or “survivor.”<sup>179</sup> The integration of both labels, alternatingly throughout, is also a common strategy.<sup>180</sup>

For instance, in a resource developed in part by the Vanderbilt First Amendment and Harvard Law School’s Cyberlaw Clinic, the toolkit notes:

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<sup>178</sup> *Family Law Clinic*, Univ. of Ark., <https://ualr.edu/law/clinical-programs/litigation-clinic/> (last visited Aug. 1, 2023) (“In the Family Law Clinic, qualified UA Little Rock law students . . . may represent clients who are victims of domestic violence, parents seeking to establish or modify visitation or custody arrangements, spouses seeking divorce, or family members establishing guardianship over disabled relatives.”); Domestic Violence Clinic, Mercer Law, <https://mercerlaw.university-tour.com/practice-makes-purpose/clinics#:~:text=Domestic%20Violence%20Clinic> (last visited Aug. 1, 2023) (“Mercer Law’s Domestic Violence Clinic provides students with an opportunity to represent victims in Temporary Protective Orders.”); *Immigration Litigation and Appellate Clinic*, Univ. of Idaho, <https://www.uidaho.edu/law/academics/experiential-learning/clinics/immigration> (last visited Aug. 1, 2023) (“Representing clients in removal proceedings before Immigration Judges, the Board of Immigration Appeals, and federal appellate courts; Representing clients in their applications for permanent residence, citizenship, asylum, special immigrant juvenile status, and visas for victims of domestic violence and other crimes.”); Crim Victim Litigation Clinic, Lewis & Clark School of Law, [https://law.lclark.edu/programs/criminal\\_law/cvllc/](https://law.lclark.edu/programs/criminal_law/cvllc/) (last visited Aug. 1, 2023) (“Victims’ rights were passed into law several decades ago but are only now being recognized in the media and in law.”).

<sup>179</sup> *Domestic Violence Law Clinic*, Univ. of Alabama, <https://www.law.ua.edu/academics/law-clinics/domestic-violence-clinic/> (last visited Aug. 1, 2023) (“The Domestic Violence Law Clinic provides free and comprehensive legal assistance on civil matters to survivors of domestic violence in Tuscaloosa County, Alabama. The Clinic takes a holistic approach to a survivor’s civil legal needs, with the clinic student assessing and helping the survivor escape further domestic violence, and if appropriate, then representing the survivor in obtaining a protection from abuse order.”); *Domestic Violence Clinic*, Univ. of Oregon, <https://law.uoregon.edu/become-practice-ready/clinics/domestic-violence> (describing “represent[ation of] low-income survivors of domestic violence, sexual assault, and stalking in civil legal matters,” and using the term “victim” only when the term appeared in a statute or agency name, such as when disclaiming the clinic “is a recipient of Victim of Crime Act Funds



Note: This toolkit uses both the terms victim and survivor to refer to people who have experienced sex-based harassment. This is because some people use one or both terms to describe themselves, and others feel that neither term accurately captures the complexity of their identity or experience. The toolkit also uses the term abuser to refer to people who have caused sex-based harassment.<sup>181</sup>

Accordingly, a range of terms might be most appropriate to use, either alternately or in combination, depending on an individual's preference, audience, and other considerations.

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from the Oregon Department of Justice, Crime Victim and Survivor Services Division (DOJ/CVSSD)"); *Domestic Violence Clinic*, Georgetown Univ. Law Ctr., <https://www.law.georgetown.edu/experiential-learning/clinics/our-clinics/domestic-violence-clinic/course-overview/> (last visited Aug. 1, 2023) ("For example, a CPO judge may direct an abusive partner to cease assaulting and threatening a survivor; to stay away from the survivor's home, person and workplace; not to contact the survivor in any manner; and to vacate the parties' shared home.").

<sup>180</sup> *Family Justice Clinic*, Univ. of Idaho, <https://www.uidaho.edu/law/academics/experiential-learning/clinics/faces> (last visited Aug. 1, 2023) ("Family Justice Clinic is a partnership to provide free legal services to victims of domestic and sexual abuse referred from FACES to the clinic. Students handle all aspects of representation of survivors, including gathering all information needed to determine the legal issue at hand and which, if any, legal services will be provided."); *Restoration and Justice Clinic*, Pepperdine Univ., <https://law.pepperdine.edu/experiential-learning/clinical-education/clinics/restoration-and-justice-clinic/> (last visited Aug. 1, 2023) (noting "represent[ation of] victims of domestic violence, human trafficking, sexual assault and other gender-based crimes" and also describing "advocacy to ensure that the survivor's legal needs are met"); *Human Trafficking Clinic + Lab*, Univ. of Mich., <https://michigan.law.umich.edu/academics/experiential-learning/clinics/human-trafficking-clinic-0> (last visited Aug. 1, 2023) ("Our vision for the HTC+Lab partnership is that the work with individual survivors in the clinic will help ensure the lab is victim-centered and informed by lived-experience.").

<sup>181</sup> SURVIVORS SPEAKING OUT A TOOLKIT About Defamation Lawsuits and Other Retaliation By and For People Speaking Out About Sex-Based Harassment, Nat'l Women's L. Ctr & Know Your IX, at 1, <https://nwlc.org/wp-content/uploads/2023/08/Toolkit-Printer-Friendly-PDF.pdf>.



Content, or “[t]rigger warnings[,] are distinct in that they originated as a measure of protection specifically for survivors of trauma” as a way to “warn readers before discussing their experiences,” although they have expanded more broadly.<sup>182</sup> “Trigger warnings are now used in educational settings, social media, entertainment, and other venues,” and it may be helpful to consider the use of trigger warnings in legal documents, especially in the context of domestic and sexual violence.<sup>183</sup> For example, two recent lawsuits filed against Sean Combs contained a trigger warning as seen here:<sup>184</sup>

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<sup>182</sup> Payton J. Jones, Benjamin W. Bellet & Richard J. McNally, *Helping or Harming? The Effect of Trigger Warnings on Individuals With Trauma Histories*, <https://orcid.org/0000-0001-6513-8498> (“Giving a trigger warning means providing prior notification about forthcoming content that may be emotionally disturbing ([Boysen, 2017](#)). In this sense, trigger warnings are similar to PG-13 or ‘viewer discretion advised’ warnings that are common across many different forms of media.”); *but see* Shawnelle Martineaux, Don't Enshrine Trigger Warnings in Tort Law, *Journal of Free Black Thought*, <https://freeblackthought.substack.com/p/dont-enshrine-trigger-warnings-in> (“Today, however, with the [preponderance](#) of [evidence](#) of their ineffectiveness, their potential [harmfulness](#), and an ever-extending list of purported triggers aimed at protecting against nebulous trauma events, I am compelled to forward three arguments against trigger-warning liability.”).

<sup>183</sup> *Id.*

<sup>184</sup> *See Doe v. Combs, et al.*, Case 1:23-cv-10628 (Dec. 6, 2023), <https://s3.documentcloud.org/documents/24193182/new-jane-doe-lawsuit-against-diddy-aka-sean-combs.pdf>.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	
JANE DOE,	:
	:
Plaintiff,	:
	:
v.	:
	:
SEAN COMBS, HARVE PIERRE; THE THIRD	:
ASSAILANT; DADDY'S HOUSE RECORDINGS,	:
INC. and BAD BOY ENTERTAINMENT	:
HOLDINGS, INC.,	:
	:
Defendants.	:
-----X	

Civil Case No.

**COMPLAINT**

**JURY TRIAL DEMAND**

**TRIGGER WARNING:**  
**THIS DOCUMENT CONTAINS HIGHLY GRAPHIC INFORMATION OF A**  
**SEXUAL NATURE, INCLUDING SEXUAL ASSAULT**

Plaintiff Jane Doe ("Ms. Doe") hereby alleges as follows:

**PRELIMINARY STATEMENT**

1. On November 16, 2023, Casandra Ventura a/k/a "Cassie" filed a 35-page lawsuit in which she exposed Sean Combs for subjecting her to nearly a decade of physical, sexual and emotional abuse punctuated by rape, sex trafficking and being forced to engage in drug fueled nonconsensual sexual encounters with other men.

2. Ordinarily, when a lawsuit such as Ms. Ventura's is filed that involves events that took place long ago, witnesses are few and far between and evidence hard to muster. Not so for the claims brought against Mr. Combs. Within minutes of the filing, salient facts of Ms. Ventura's claims were confirmed by various witnesses, including a rival musician whose car Mr. Combs blew up as well as various individuals who observed Mr. Combs beat Ms. Ventura.

## G. Homelessness

People may experience a range of housing access challenges and the experiences of unhoused individuals can vary greatly.<sup>185</sup> The people-first approach would discourage the use of phrases like “homeless person” in favor of alternatives such as “person experiencing homelessness.”<sup>186</sup> This phrasing uses “person-centered terminology to phrase homelessness as an experience or an adjective, as opposed to an aspect inseparable from one’s identity.”<sup>187</sup> Although this phrasing has utilized by some courts;<sup>188</sup> and some have utilized similar language such as “unhoused person,”<sup>189</sup> the use of “homeless person(s)” is still commonplace.<sup>190</sup>

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<sup>185</sup> *Four Categories of the Homeless Definition*, HUD EXCHANGE, <https://www.hudexchange.info/homelessness-assistance/coc-esg-virtual-binders/coc-esg-homeless-eligibility/four-categories/> (describing various experiences of housing insecurity, including “literally homeless” and “sheltered homeless”).

<sup>186</sup> *People Experience Homelessness, They Aren’t Defined by It*, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS (June 28, 2017), <https://www.usich.gov/news/people-experience-homelessness-they-arent-defined-by-it/>.

<sup>187</sup> Sara K. Rankin, *Civilly Criminalizing Homelessness*, 56 HARV. C.R.-C.L. L. REV. 367, 412 (2021).

<sup>188</sup> *Denver Homeless Out Loud v. Denver, Colo.*, 32 F.4th 1259, 1264 (10th Cir. 2022) (“Encampments of people experiencing homelessness have proliferated throughout Denver.”); *Honkala v. U.S. Dep’t of Hous. & Urb. Dev.*, No. CV 21-0684, 2022 WL 282912, at \*1 (E.D. Pa. Jan. 31, 2022) (“In 2018, the total number of people experiencing homelessness in Philadelphia was 5,788.”); *Where Do We Go Berkeley v. California Dep’t of Transportation*, No. 21-CV-04435-EMC, 2022 WL 1032494, at \*3 (N.D. Cal. Apr. 6, 2022) (discussing “housing opportunities come up for persons experiencing homelessness”).

<sup>189</sup> *Rios v. Cnty. of Sacramento*, 562 F. Supp. 3d 999, 1019 (E.D. Cal. 2021) (“Courts within this Circuit have often considered what process is due when a local government removes an unhoused community and its belongings from a particular property.”).

<sup>190</sup> *See, e.g., Miranda v. United States*, No. 2:17-CR-00159-DBB, 2023 WL 4303742, at \*2 (D. Utah June 30, 2023).

Many housing clinics do not work with the unhoused population, but are instead working with renting “tenants” or “homeowners” to prevent eviction or property loss.<sup>191</sup> Some clinics work on housing issues in services of a particular population, like veterans.<sup>192</sup> However, clients receiving services from any clinics might be experiencing homelessness or dealing with housing insecurity.<sup>193</sup> Of the clinics working with this community,

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<sup>191</sup> Housing Law Clinic, Vanderbilt Law School, <https://law.vanderbilt.edu/courses/466> (last visited July 30, 2023) (“Students in the Housing Law Clinic will represent low-income tenants and homeowners from across the state of Tennessee in a wide variety of matters that directly impact their housing. Students will defend clients in eviction and foreclosure actions, represent them in Fair Housing claims, work with local housing authorities to protect their federally subsidized housing benefits, and negotiate settlements with private landlords.”); *see e.g.*, Civil Justice Clinic, Duke Law School, <https://law.duke.edu/civiljustice/> (last visited Nov. 1, 2023) (“[S]tudents directly represent clients in matters that include actions arising from unsafe housing, landlord-tenant disputes, evictions, foreclosures, rent-to-purchase agreements, breach of contract, [and] consumer protection issues,” among others.); Fair Housing Clinic, Univ. of Baltimore School of Law, <https://www.law.umaryland.edu/academics/clinics/fair-housing-clinic/> (last visited Nov. 1, 2023) (“This clinic helps meet the critical need for legal services for victims of housing discrimination in Baltimore” guaranteed by the Fair Housing Act.); Housing Clinic, Univ. of Idaho, <https://www.uidaho.edu/law/academics/experiential-learning/clinics/housing-clinic> (last visited Nov. 1, 2023) (“Housing Clinic focuses primarily on residential tenant eviction defense, habitability, and security deposits.”).

<sup>192</sup> *See, e.g.*, Veterans Justice Clinic: Poverty, Homelessness & Criminalization, UCLA, <https://law.ucla.edu/academics/curriculum/veterans-justice-clinic-poverty-homelessness-criminalization> (last visited July 30, 2023).

<sup>193</sup> Olivia Klein, *Clients, CORIs, and community in Harvard Defenders*, Harvard Law School, <https://hls.harvard.edu/clinic-stories/clients-coris-and-community-in-harvard-defenders/> (last visited July 30, 2023) (“In CORI representation, you get to build a holistic relationship with your clients and learn about their hopes. It’s empowering to say, what are your goals, and how can we partner with you to get there?” she says. “I had a client who had been experiencing homelessness for several decades, and we were able to seal her CORI, and I’m deeply grateful that now she’s in permanent housing. It was really transformational to see how well she’s doing.”).

several use the term “experiencing homelessness.”<sup>194</sup> Some have also used the term “unhoused,”<sup>195</sup> and some “homeless.”<sup>196</sup> The Homeless Advocacy Clinic at University of the Pacific uses a combination of terms in describing the crisis in accessing services:

In 2019, the Sacramento County Board of Supervisors formally declared an emergency homeless shelter crisis. The 2019 Homeless Point in Time for Sacramento County found that 5,570 persons experience homelessness on a given night, and that number has increased with COVID-19. In

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<sup>194</sup> *Penn Law’s Walk-In Legal Assistance Project (WILA)*, Univ. of Penn. Law School, <https://www.law.upenn.edu/live/profiles/795-penn-laws-walk-in-legal-assistance-project-wila> (last visited Aug. 20, 2023) (“At a weekly clinic, WILA provides accessible civil legal services to people who are experiencing homelessness or are housing insecure.”); *Report Documents the Criminalization of Homelessness*, Yale Law School (Nov. 17, 2016), <https://law.yale.edu/yls-today/news/report-documents-criminalization-homelessness> (“The report documents the harms people experiencing homelessness suffer at the hands of the criminal justice system every day.”); *Housing Rights Initiative*, Univ. of Miami School of Law, <https://www.law.miami.edu/academics/programs/human-rights/initiatives/housing-rights/> (“In the United States and locally in Miami, the use of petty offenses to criminalize poverty is a critical issue where people experiencing homelessness regularly face the threat of criminal sanctions for fulfilling basic needs.”).

<sup>195</sup> *See, e.g.,* Nora Moriarty-McLaughlin, *Pepperdine’s Legal Aid Clinic Offers Lifeline to L.A.’s Unhoused Population*, Pepperdine School of Law (Jan. 25, 2023), <https://pepperdine-graphic.com/pepperdines-legal-aid-clinic-offers-lifeline-to-l-a-s-unhoused-population/> (“Law students at the Legal Aid Clinic at Pepperdine’s Caruso School of Law help unhoused and impoverished people in Downtown L.A.’s Skid Row by providing them access to legal support.”); *Law Students Help Clients to Enforce Civil Rights*, Univ. of Ark. (Apr. 27, 2022), <https://news.uark.edu/articles/59931/law-students-help-clients-to-enforce-civil-rights> (“In addition to civil rights litigation, students . . . helped a local unhoused man charged with felony arson finally get released from jail.”).

<sup>196</sup> *Clinics*, Pepperdine, <https://law.pepperdine.edu/experiential-learning/clinical-education/clinics/> (last visited Aug. 1, 2023) (“In the Legal Aid Clinic at the Union Rescue Mission students represent clients who are homeless on Skid Row in downtown Los Angeles.”).

2020, more than 95 homeless men and women died in Sacramento County, and the number of homeless deaths is surging. The data from a variety of governmental and nonprofit organizations is overwhelming that the vulnerable reentry and homeless population suffer disproportionately from serious mental illness and substance use disorders.<sup>197</sup>

These terms can also be adapted for use across communities or when working with individuals who have intersectional identities. For instance, terms that relate to both survivor status and housing status can be used in combination, such as Harvard's use of the term "survivor-tenant."<sup>198</sup>

## Conclusion

Inclusive language practices can help ensure all individuals are "treated fairly, with courtesy and respect, without regard to their race, gender, or any other protected personal characteristic."<sup>199</sup> Clinical advocacy reflects the range of terminology used in our society and by our courts, as reflected in the examples discussed. Clinics can model the balancing

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<sup>197</sup> *Homeless Advocacy Clinic Goals & Structure*, Univ. of the Pacific, <https://law.pacific.edu/law/legal-clinics/homeless-advocacy-clinic> (last visited Aug. 1, 2023); see also *Gift to Homeless Advocacy Clinic Will Support Students and Community*, Univ. of the Pacific, <https://www.pacific.edu/pacific-newsroom/gift-homeless-advocacy-clinic-will-support-students-and-community> (last visited Aug. 1, 2023).

<sup>198</sup> *A Victory for Survivor-Tenants in Housing Court*, Housing Law Clinic, Harvard Law School (Sept. 26, 2017), <https://hls.harvard.edu/clinic-stories/clinical-voices/a-victory-for-survivor-tenants-in-housing-court/>.

<sup>199</sup> *People v. Gobrick*, No. 352180, 2021 WL 6062732, at \*1 (Mich. Ct. App. Dec. 21, 2021).

required to make inclusive language decisions—weighing accuracy, precision, relevance, and respect communicated by word choices—in all aspects of their practice.